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CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

CONFIRMATION HEARINGS ON APPOINTMENTS TO THE FEDERAL JUDICIARY AND THE DEPARTMENT OF JUSTICE

FEBRUARY 15, 23; APRIL 6, 13, 27; MAY 4, 18, 25; JUNE 8, 15, 22, AND 29, 1983

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CONFIRMATION HEARING ON:
PAMELA ANN RYMER AND ALLEN JOE FISH

TUESDAY, FEBRUARY 15, 1983

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, in room SD-226, Dirksen Senate Office Building, at 2:10 p.m., Hon. Strom Thurmond (chairman of the committee) presiding.

Staff present: Duke Short, chief investigator; Allan Spence, investigator; and Mary Lynn Batson, investigative clerk.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

Today's hearing is on two nominations. One is Pamela Ann Rymer, of California, to be U.S. district judge for the Central District of California. The other is Judge Allen Joe Fish, of Texas, to be U.S. district judge for the Northern District of Texas.

Senator Wilson, we will take you first. I know you are busy and want to get started. Come around and have a seat. It is a pleasure to welcome you here, and you may proceed.

STATEMENT OF HON. PETE WILSON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator WILSON. Thank you very much, Mr. Chairman.

It is my honor and privilege today to introduce to the committee a candidate for the Federal bench in the Central District of California. She is Pamela Ann Rymer. She has had a very distinguished career. She received her baccalaureate from Vassar College, and then took her bachelor of laws from Stanford University, which I will note not at all parenthetically, is a very fine law school, having gone to one across the bay from it.

She has distinguished herself in practice, becoming a specialist in antitrust litigation, has been associated with two very fine law firms, and has been a partner in her own firm.

She has culminated that career by service to the legal profession in California as the chairman of the Los Angeles County Bar Association section on antitrust law.

I would also hasten to add, she has distinguished herself in another capacity. She has indicated very clearly her desire to serve in a different capacity than the purely professional capacity as a lawyer. She was appointed by Governor Reagan and then reappointed by Governor Brown to the Postsecondary Education Commission of the State of California, and currently serves as the chairman of that body. It has as its responsibility and purview the consideration of all subjects that will affect postsecondary education in the State of California. I would suggest that the bipartisan nature of her approval says something quite special about Ms. Rymer.

Ms. Rymer is, I think, a very special person, and I think that her appointment would be one that would do credit to the administration and add distinction to the Federal bar in the State of California.

So it is my privilege to introduce her to the committee, and to urge your support for her appointment.

The CHAIRMAN. Ms. Rymer, we are pleased to have you with us, and the fact that you are endorsed here by the distinguished Senator from California stands strongly in your stead. Senator Wilson is a new Senator here, but already he has gained the respect of the Members of the Senate. He is a very able man, and he has given you strong endorsement; that will mean a lot to you.

Now, we will be glad to have you stand up and be sworn, and then we will excuse you and take Senator Tower.

The testimony you will give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God.

Ms. RYMER. Yes.

The CHAIRMAN. Senator Tower is here, and I know he is busy. We will ask him if he will come around and bring his nominee.

Senator WILSON. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Tower, come around. Senator Tower, I believe you are presenting Judge Allen Joe Fish to be U.S. district judge for the Northern District of Texas. We will be glad to hear from you.

STATEMENT OF THE HON. JOHN TOWER, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator TOWER. Thank you very much, Mr. Chairman. I apologize for being late, but with the completion of the Hart Building, the trolley service is less reliable than it used to be, and I find that it takes a little more time to get here than it used to. We will find out a lot of things about that before it is all over.

It is a great honor and a pleasure to present to you today Judge Allen Joe Fish, who has been nominated by the President for the U.S. District Court for the Northern District of Texas.

Throughout his present tenture as an associate justice of the Court of Appeals for the Fifth District of Texas, Judge Fish has demonstrated fairness and adherence to the precepts of the Constitution. He has served as a State trial judge, where he received one of the highest ratings among the civil district judges in the 1981 Dallas Bar Association Judicial Evaluation Poll.

Judge Fish is a native of Dallas, a member of Phi Beta Kappa, graduated cum laude from Yale College, and was a high ranking graduate at Yale Law School.

In addition to his impressive legal experience, Joe Fish displays all the qualities necessary to serve on the Federal Bench, a knowledge of law, legal precedents, and compassion for his fellow citizens. I believe that Judge Fish, if confirmed by the Senate, will bring these same outstanding qualities to the Federal Bench and I am confident of his ability to assume this important position.

Mr. Chairman, this nomination signified the commitment of this administration to appoint the most qualified and impartial jurists to our Federal judicial system, and it is well in keeping with the tradition of excellence among the Federal judiciary in the Northern District of Texas.

Mr. Chairman, it was my privilege to recommend to the President this nomination from a field of very, very qualified candidates under active consideration, and the fact that he was nominated indicates that he is certainly one of the best, because I can assure you that there was some pretty good competition for this position among very capable and qualified people.

So without reservation, I recommend that the nomination be speedily reported by the Judiciary Committee, and acted on favorably by the Senate.

The CHAIRMAN. Well, thank you very much, Senator Tower. We are glad to have you with us, and the fact that you endorse him so highly I think means he will be confirmed promptly.

Senator TOWER. Thank you very much, Mr. Chairman.

The CHAIRMAN. We will now take the two judges and ask them a few questions. Feel free to stay if you wish, but if you are busy, feel free to leave.

Senator TOWER. I am so confident in this young man that I know nothing I can do sitting here will help him. I think he can handle everything on his own. I would like to stay for the testimony, but I have some urgent business in the Armed Services Committee.

The CHAIRMAN. Thank you.

Senator TOWER. Thank you, Mr. Chairman.

The CHAIRMAN. Judge Fish, stand up and take the oath.

Do you swear the testimony you shall give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Judge FISH. I do.

The CHAIRMAN. Ms. Rymer, I believe we will take your testimony now, and Judge Fish, you can stay there or move back, as you like.

TESTIMONY OF PAMELA ANN RYMER, NOMINEE, U.S. DISTRICT JUDGE, CENTRAL DISTRICT OF CALIFORNIA

The CHAIRMAN. Ms. Rymer, do you have any family members here you would like to present to the committee?

Ms. RYMER. The closest family member I have. I would like to introduce her, a very special friend who is the daughter of my best friend and college classmate, Marjorie Smith, who is now a freshman at Yale University.

The CHAIRMAN. I may have said Judge Rymer. It is Ms. Rymer.

Ms. RYMER. Yes, sir.

The CHAIRMAN. Soon to be a judge. Would your guest stand up?

[Ms. Marjorie Smith stands.]

The CHAIRMAN. You have been a practicing attorney since 1965, and you have now been nominated for the position of U.S. district court judge. Senator Wilson recommended you for this position.

Ms. RYMER. Yes, sir.

The CHAIRMAN. There is no objection on behalf of the other Senator?

Mr. SHORT. No, sir.

The CHAIRMAN. Without objection, the brief statement by Senator Cranston will be placed in the record at this point.

[Prepared statement of Senator Alan Cranston follows:]

PREPARED STATEMENT OF SENATOR ALAN CRANSTON

Mr. Chairman, my thanks for this opportunity to lend my support to the nomination of Pamela Ann Rymer to be U.S. district court judge for the Central District of California.

Ms. Rymer received her law degree from Stanford University in 1964, and has practiced law in California since then. Currently, she is a partner in the Los Angeles firm of Toy & Rymer.

Ms. Rymer's peers, as well as several judges in my home State, have attested to her competence, intelligence and capability. I fully recommend her favorable nomination by this committee.

Thank you.

The CHAIRMAN. Ms. Rymer, what do you feel will be the most rewarding aspects of serving in the capacity of a U.S. district judge?

Ms. RYMER. The opportunity, hopefully, to make a very significant and a lasting contribution to the judicial system through competent decisions, case by case, and through the opinions which I will be privileged to write.

The CHAIRMAN. I have seen some judges abuse jurors and witnesses and others around the courtroom. It seems an effort just to flaunt their power. Personally, I like to see the higher a person gets in life, the more humble he becomes. The judge has almost unlimited power, and I think the matter of judicial temperament is very important,

Would you please give me your thoughts on this subject?

Ms. RYMER. Well, I share your concern for it. I, from a perspective of both being a member of the Judicial Appointment Committee of the Los Angeles County Bar and chairing a commission which is not dissimilar from the responsibilities that would be mine in the courtroom, I would say that at the top of the list of those characteristics that a judge should have are an even disposition, even temperament, consideration for counsel and for litigants, a sense of understanding that the most important people in the courtroom are the parties and the jurors, if there are jurors present, and not the judge. Patience, and a sense of humor.

The CHAIRMAN. Some of us have advocated in the Model Code of Judicial—the Criminal Code—sentencing commissions to establish some uniform sentencing. Some judges, for instance, might give 2 years and another 20 years, and we feel maybe if we can get some uniformity there and yet give some flexibility, it would be very helpful to a judge. How do you feel about that?

Ms. RYMER. I cannot speak from experience in sentencing, obviously, but I do think that uniformity and predictability are very important. I would also think that flexibility on the part of the trial judge who was most familiar with the facts is an important thing to retain.

The **Chairman**. We have a bill pending now, a sentencing bill, that provides for a commission that would set out guidelines that should be very helpful, I feel, to a trial court judge.

Do you feel a district court judge should assume direct control over complex issues in cases in order to avoid delays and in effect manage such cases?

Ms. **Rymer**. I think it can be very helpful. In complex litigation, the progress of that litigation depends on the counsel's assessment of the judge's requirements for management of the calendar. The judge who takes early control and involvement over identification of issues and discovery and the schedule that counsel will follow can make a material difference in the progress of the litigation.

The **Chairman**. Some calendars in the Federal courts have been clogged, and it has been suggested by some people that if the judges would run court a little longer that they could catch up with these calendars. How would you feel about that? Would you be willing to extend the length of the day a little longer so you can catch up with the calendars so the litigants can get their cases decided?

Ms. **Rymer**. I personally would. I have been blessed with a relatively high energy level and feel every bit of that should be committed to efficiency and the best handling of the calendar possible.

The **Chairman**. Ms. Rymer, the phrase "judicial activism" is often used to describe the tendency of judges to make decisions on issues not properly within the scope of their authority. What does the phrase "judicial activism" mean to you?

Ms. **Rymer**. I believe very much in the system of checks and balances that we have in this country and in the importance of each of the three branches of government, and I believe that the role of the judiciary is as interpreter of legislation as enacted by the legislative branch.

I would interpret the phrase "judicial activism" to imply a tendency on the part of the court to become policymakers more than interpreters of existing legislation.

The **Chairman**. The Constitution provides that the legislative body, the Congress, shall make the law, the executive branch shall enforce and administer the law, and the judicial branch to interpret the law. If the Senate confirms you as a U.S. district court judge, do you feel you could restrict your actions to interpreting the law and not making the law?

Ms. **Rymer**. I feel that that is absolutely the only proper role of the judiciary.

The **Chairman**. Some judges have felt they had a responsibility to take steps necessary to protect society or change society, and have handed down decisions which in effect had the effect of making law. As much as they may have felt it would improve society, they really didn't have the authority to do that, and would it be your policy to restrict yourself to the responsibilities of the judicial branch and not attempt to write the law?

Ms. **Rymer**. It would, because I believe those people who are responsible by way of election are the ones who ought to make the kinds of decisions which the Chair just outlined.

The CHAIRMAN. Are there ever circumstances where you would consider it appropriate to decide a case on some basis other than the one where the intent of the framers of legislation or of the constitutional provisions can be detected, either through the text of a provision or its surrounding legislative history?

Ms. RYMER. As I indicated in response to the Chair's last question, I think the answer is no. The best guide is certainly legislative intent, certainly not to take judicial notice of general opinion or policy.

The CHAIRMAN. Is there anything else that you would like to say for the record here before we retire?

Ms. RYMER. Nothing other, Mr. Chairman, than to thank President Reagan for his confidence, and to thank Senator Wilson on this first occasion for him for coming with me today, and for his support, and Senator Cranston for his gracious statement, and to you, sir, on behalf of the committee, thank you for the opportunity to appear and for your consideration.

The CHAIRMAN. We are glad to have you with us, and we hope you enjoy your service on the Federal Bench.

Ms. RYMER. Thank you very much.

The CHAIRMAN. You are now excused.

Without objection, we will place the biography of Ms. Rymer in the record.

Judge Fish, without objection, we will also place your biography in the record.

TESTIMONY OF JUDGE ALLEN JOE FISH, NOMINEE, U.S. DISTRICT JUDGE, NORTHERN DISTRICT OF TEXAS

The CHAIRMAN. Do you have any family members or friends you wish to introduce?

Judge FISH. I am sorry to say, Senator Thurmond, that I do not.

The CHAIRMAN. Judge Fish, you have been an associate justice of the Court of Appeals for the Fifth Supreme Judicial District of Texas since September of 1981?

Judge FISH. That is correct, sir.

The CHAIRMAN. This court, I believe, has intermediate appellate jurisdiction in civil and criminal cases from the trial courts in its district, and also has limited original writ jurisdiction. Is that correct?

Judge FISH. Yes.

The CHAIRMAN. Judge, do you see any difficulty in the transition from your present position in the appellate court to that of trial judge at the Federal district level?

Judge FISH. I do not, Senator Thurmond.

Before my service on the court of appeals, I was a State district judge for a year and a half, and that court was a trial court of general jurisdiction, very like the Federal district bench.

I look forward again to the opportunity of seeing witnesses and parties and jurors on a daily basis rather than spending my time in the library. So I don't anticipate any difficulty whatever.

The CHAIRMAN. Judge Fish, would you tell the committee how you would handle an incident in which counsel for one of the parties in your court was obviously not a skilled litigator and was not prepared to adequately represent the interests of his or her client?

Judge FISH. Senator Thurmond, I believe I would have to make a distinction there between civil and criminal cases. If that happened in a civil case, I am not sure I would do anything other than as might be necessary to expedite the progress of the case.

My feeling generally is that a party chooses his lawyer and the decisions that that lawyer makes, whether good or bad, are the result of the party's free choice.

In criminal cases, however, as I understand the law, there is a sixth amendment right to counsel which embraces the right to effective assistance of counsel, and I think that in a criminal case I would be legally bound to have a conference with the prosecutor and the defense counsel, express my concerns to both of them, and tell defense counsel that if his defense did not improve, then I would have to consider appointing another lawyer.

The CHAIRMAN. Judge Fish, how would you resolve a conflict between your own conscience or your own sense of justice, and the clear meaning of a statutory or constitutional provision?

Judge FISH. Senator Thurmond, I have difficulty with that hypothetical, because I am a legislative supremacist. I strongly believe that it is the province of the legislature as the popularly elected representatives of the people, to make the law, and even though I might disagree with it, I believe it is my duty as a judge to apply it according to its plain meaning, and only if that meaning is ambiguous or uncertain would I have any power or leeway to interpret the law and go contrary to it according to my lights rather than the lights of the legislative branch.

The CHAIRMAN. Judge, in response to a portion of the committee's questionnaire relative to judicial activism, you stated: "Courts are not equipped to run schools, prisons, or libraries on an ongoing basis. It is questionable, therefore, how effectively they can do so for any extended period."

Judge Fish, what are the standards that you would use in deciding that your court had a continuing administrative responsibility to oversee the implementation of one of its orders?

Judge FISH. Senator Thurmond, as I think I indicated elsewhere in my responses to the questionnaire, I conceive that the proper role of the Federal judiciary is to tailor the remedy in a particular case to the grievance alleged, and to the facts proved.

I believe that the court's duty is to see that the remedy it orders is carried out, but once that is accomplished, then that ends the case or controversy, and in my view the court has no further subject matter jurisdiction and the matter becomes moot at that point and the court should dismiss the case.

The CHAIRMAN. Some judges have taken it on themselves to attempt to run schools and prisons and other State institutions. I am very pleased to hear you say that you are not in favor of that.

Judge FISH. Yes, sir. I think in some instances the courts, when their jurisdiction is properly invoked and when a cause of action is proved, may have to take some action, but I hope that in my service as a district judge, if the Senate sees fit to confirm me, that I would be able always to order the narrowest possible remedy for the grievance proved.

The CHAIRMAN. Judge, you also informed the committee in your questionnaire in these words: ". . . unpopular decisions should not be equated with 'judicial activism.' Federal judges have always been called upon to make unpopular decisions. That has been their job from the beginning."

Judge, where, in your view, does a conscientious judge draw the line between judicial decisionmaking and legislative decisionmaking, and what are the criteria that you would consider in resolving whether or not a decision was the type that should be made by a judge as opposed to an elected legislative body?

Judge FISH. Senator Thurmond, I have always felt in the 3 years that I have been a judge that there were only two instances in which it might be appropriate for me to make law, as the phrase is used.

One is an instance in which the legislature has not spoken on the case before me, and as the common law did, for me to develop a remedy until the legislature prescribes one.

The other is an instance where there are two lines of appellate authority which go in opposite directions, and if there is no controlling precedent either way from the court of last resort, then I would be free to choose the rule that I considered most just under the circumstances.

Otherwise, I do not believe it is appropriate for a judge to make law.

The CHAIRMAN. In other words, judicial activism as it is commonly used would be opposed by you?

Judge FISH. Yes, sir.

The CHAIRMAN. Well, I am glad to hear you take that position. Those are all the questions I have. Do you wish to say anything for the record?

Judge FISH. Senator Thurmond, I would only say that it has been an honor to appear before your committee today, and I want to thank the committee for the opportunity to make this appearance, and also to thank Senator Tower for his very kind introduction.

The CHAIRMAN. Well, both of you nominees today have been recommended by very fine Senators, Ms. Rymer by Senator Wilson and you by Senator Tower, and the committee will probably act on these shortly.

We thank you for your appearance here, and wish you a happy tenure on the bench.

Judge FISH. Thank you.

The CHAIRMAN. The committee stands adjourned.

[Whereupon, at 2:35 p.m., the committee was recessed, to reconvene subject to the call of the Chair.]

BIOGRAPHIES

PAMELA ANN RYMER

NOMINEE, U.S. DISTRICT JUDGE, CENTRAL DISTRICT OF CALIFORNIA

Birth: January 6, 1941, Knoxville, Tenn.
Legal residence: California.
Marital status: Single.

Education: 1957-61—Vassar College, A.B. degree; 1958 (summer)—San Francisco State College; 1961-63 Stanford University, LL.B. degree 1964.

Bar: 1966—California.

Experience: 1964—Director of Political Research and Analysis, Citizens for Goldwater Committee, Washington, D.C.; 1965-October 1966—Vice President, Rus Walton & Associates, Los Altos, Calif. 1966-75—Associate 1966-1972, partner 1973-1975, Lillick, McHose & Charles, Los Angeles, Calif.; 1975 to present—Partner, Toy and Rymer, Los Angeles, Calif.

ALLEN JOE FISH

NOMINEE, U.S. DISTRICT JUDGE, NORTHERN DISTRICT OF TEXAS

Birth: November 12, 1942, Los Angeles, Calif.

Legal residence: Texas.

Marital status: Married to Betty Lou Stephens Fish, 1 child.

Education: 1961-65—Yale College, B.A. degree, magna cum laude; 1965-68—Yale Law School, LL.B. degree.

Bar: 1968—Texas.

Experience: 1968-80—Associate and partner, McKenzie & Baer, Dallas, Tex.; 1980-81—District judge, 95th District Court of Dallas County; 1981 to present—Associate justice, Fifth District Court of Appeals of Texas.

CONFIRMATION HEARING ON:

SHIRLEY WOHL KRAM AND GREGORY WRIGHT CARMAN

WEDNESDAY, FEBRUARY 23, 1983

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, in room SD-226, Dirksen Senate Office Building, at 2:20 p.m., Hon. Strom Thurmond (chairman of the committee) presiding.

Staff present: Duke Short, chief investigator; Allan Spence, investigator; and Mary Lynn Batson, investigative clerk.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

We have met today to consider the nomination of Judge Shirley Wohl Kram, of New York, to be U.S. district judge for the Southern District of New York, and Gregory Wright Carman, of New York, to be a judge of the U.S. Court of International Trade.

It seems that Senator D'Amato has been very active to get so many of his people appointed here to positions. I think it indicates his great power and influence here in Washington. Senator, I congratulate you. I know you are interested in these nominations. Would you care to make a statement now concerning them, Senator?

STATEMENT OF HON. ALFONSE M. D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator D'AMATO. Thank you very much, Mr. Chairman, and let me first indicate my deep appreciation not only for your thoughtfulness and courtesy over these years in helping to enrich our judicial system, our legal system, by way of our appointments that have flowed through your committee, but also the graciousness and the courteous manner, and the efficient and effective manner in which your staff and your aides have made this process one that has become much less onerous than it ordinarily would be. We in the Senate are indeed especially grateful for your thoughtfulness and for your guidance, Senator Thurmond.

Mr. Chairman, it is an especially great pleasure for me to introduce to the committee two very distinguished New Yorkers who have been nominated by President Reagan to the Federal Judiciary.

Judge Shirley Kram is recommended for the vacancy in the Southern District of New York. She is a respected jurist who has served as a New York family court judge since 1971, and has sat as an acting civil court judge in New York County. A number of her decisions have been published, and she has written extensively for the Law Journal. In addition, she has lectured on family law at City University of New York's School of Law, and recently has completed a book called "The Law of Custody."

She is indeed a recognized authority in the law. I am particularly proud of Judge Kram because she is an example of a highly qualified woman jurist who will be a valuable addition to the Federal Judiciary.

I might also point out the Southern District has had many distinguished jurists, but indeed Judge Kram is uniquely the first woman jurist who has been and will be recommended and appointed by a Republican President, and I think that we break new ground that is long overdue, and I commend the President for his astuteness in recommending Judge Kram.

In addition, the confirmation of a former colleague, one whom I have known for many, many years, is particularly valuable in terms of his service in the first 2 years of my tenure as a Senator. He has worked with me closely. Congressman Carman will be a great addition to the U.S. Court of International Trade. He will further demonstrate his commitment to excellence in terms of his service on the bench.

Congressman Carman was a practicing attorney with extensive trial experience in Federal and State courts. Greg Carman is an honors graduate at St. John's University Law School, where he served on the Law Review. He has also pursued a career in public service as a local official and as a Member of Congress.

In the House of Representatives, he served with distinction on the Subcommittee on International Trade. In addition, he served on the Banking Committee, where he worked on finance and urban affairs.

Congressman Carman has had an exemplary career in government and the law. He will be a distinguished addition to the Federal bench.

I am pleased to recommend to the committee for favorable consideration these nominees. In short, Mr. Chairman, I am particularly delighted to have two good friends, two distinguished colleagues in the law, for this committee's consideration.

The CHAIRMAN. Senator D'Amato, we appreciate your interest in coming here in person and giving us your high opinion of these nominees, and rest assured that your strong recommendation of them will be of great benefit to them.

Senator D'Amato has not been in the Senate very long, but he has acquired great stature and distinction here, and we all listen to what he has to say.

Senator, if you can stay longer, feel free to do it. If not, we will excuse you.

Senator D'AMATO. Thank you very much, Mr. Chairman.

The CHAIRMAN. Now, I think we can swear both these nominees. Stand up and raise your hands to be sworn.

Is the testimony you will give in this hearing the truth, the whole truth, and nothing but the truth, so help you God?

Judge KRAM. It is.

Mr. CARMAN. It is.

The CHAIRMAN. Have a seat.

Mr. Carman, I believe Mrs. Kram was on the list first, so we will take her, and then come to you.

Mr. CARMAN. Yes, sir.

The CHAIRMAN. Without objection, a biography of Judge Kram will be placed in the record.

Now, Mrs. Kram, do you have any family members with you, or friends, that you would like to introduce?

Judge KRAM. Yes, Senator. I would like to introduce my son, Stephen Kram, who is a lawyer, admitted to the bar in the State of New York; his friend, who is next to him, Jeffrey Graham, who is a senior at Georgetown Law School; Mr. Gilbert Lazarus, who is a lawyer of the firm of Strook and Strook and Lavan; and Lawrence Smith, who is a member of this administration.

The CHAIRMAN. We are glad to have all of you present.

[Those introduced stand.]

TESTIMONY OF SHIRLEY WOHL KRAM, NOMINEE, U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF NEW YORK

The CHAIRMAN. Judge, I believe you have been a judge of the family court of the State of New York since 1971.

Judge KRAM. Yes, Senator.

The CHAIRMAN. This court, I believe, has jurisdiction in both civil and criminal cases.

Judge KRAM. Yes.

The CHAIRMAN. Is it a court of limited jurisdiction, or unlimited?

Judge KRAM. It is a court of limited jurisdiction.

The CHAIRMAN. What are the limits of your jurisdiction?

Judge KRAM. Well, when I say limited jurisdiction, I am referring to the fact that we have jurisdiction over matrimonial support matters, custody matters. We also have jurisdiction over juvenile delinquency matters involving crimes committed by children under the age of 16, termination of parental rights, foster care proceedings.

The CHAIRMAN. What is the limit of the jurisdiction in criminal matters in connection with the court?

Judge KRAM. Well, the criminal matters are mainly the juvenile delinquency, and youths under the age of 16 are tried as they would be tried in the adult criminal court, but the disposition of the case, there is not the same sentencing as there would be with an adult criminal.

The CHAIRMAN. How long a term can you give one who comes before you as a judge?

Judge KRAM. Well, I suppose the extreme would be 5 years, but that has to be explained in the sense that only part of that is in a secure facility, and then these children do come out into the community and are placed in open settings, so it would be approximately 2 years in a secure facility.

The CHAIRMAN. Now, in your civil jurisdiction, is there any limit there to what you can hand out in a sentence?

Judge KRAM. Well, in the civil cases, it is mainly for support of a wife and children.

The CHAIRMAN. And that is in your judgment, I guess, and discretion?

Judge KRAM. Yes, it is.

The CHAIRMAN. Do you see any difficulty in the transition from the State court system to the Federal district court?

Judge KRAM. Well, I think that it will be very different in that there will not be a limited kind of case that I will be trying. I think that certainly, so far as my own interest is concerned, I am looking forward to it because it will be a wide range of cases.

I think that from a technical point of view, the rules of evidence and procedure, I think that I will be able to adapt easily because the Federal rules are more liberal in many ways, in addition to which, since my designation and nomination, I have been doing a great deal of reading and studying in this area and getting ready for my job.

The CHAIRMAN. Judge Kram, in response to a portion of the committee questionnaire concerning judicial activism, you state:

> I am aware that the judges have become overseers of the administrative and social agencies. As a Family Court judge, it is apparent to me that there is a judicial intervention much beyond what the legislature intended. In foster care cases particularly, the judges are supervising the activities of the adoption agencies to the point of ordering specific visitation, regular reports to the courts, etc. These are areas in which the agencies have specific responsibilities mandated by the law and where the city and State have the obligation to supervise, but the judges have assumed this role.

Now, Judge Kram, what are the standards that you would use in deciding that your court had a continuing administrative responsibility to oversee the implementation of one of its orders?

Judge KRAM. Well, I think that I would limit it to a situation in which I have the primary responsibility as the judge. In that response, I was trying to indicate that the legislature has set up certain areas of responsibility for these social agencies, and that they were to be monitored and supervised by the State, and that in many cases the judges have undertaken this responsibility. I didn't feel that that was appropriate. I felt the judges should limit themselves to doing what they are mandated to do.

The CHAIRMAN. Judge, in the same questionnaire, you also made the following statement:

> * * * in my opinion it is the judge's role to resolve grievances and the role of the legislature to supply the answers for the social and economic problems facing the community.

Now, judge, are there ever any circumstances where you would consider it appropriate to decide a case on some basis other than one where the intent of the framers of legislation or constitutional provisions can be detected, either through the text of a provision or its surrounding legislative history?

Judge KRAM. Well, I can't think of any at this point, but I think that my answer would be that I feel that it is up to the legislature to set the social program and the social standard. I don't think that is the judge's job. I feel that a judge should limit himself or herself to what he is mandated to do.

The CHAIRMAN. Suppose there is a law on the books passed by Congress that provides certain penalties and so forth that you feel are unjust. Would you feel it was your duty as a judge to enforce those, or would you substitute your judgment for that of Congress?

Judge KRAM. No, I would never substitute my own judgment.

The CHAIRMAN. Judge, a number of years ago you were reported to be in favor of opening the family court to newsmen. Some individuals feel that Federal courts should be open for live television broadcasts. Would you please give the committee your thoughts on this?

Judge KRAM. Well, I think at the time that I took the position that the family court should be open to the press, at that time there was a tremendous amount of secrecy surrounding family court proceedings, and a great deal of agitation regarding that in the community, because the public was not permitted into the courtroom, and had no idea of the name or the punishment that was meted out to any juvenile delinquent.

But I think in the Federal court, it would be my position that the individual has a right to privacy. I think that by inviting the press in, in effect a trial becomes a public spectacle.

The CHAIRMAN. Judge, right now, a judge has extremely broad discretion in sentences. Sometimes they extend from 2 to 30 years. Do you feel it would be helpful if we had a commission to work on sentences to establish a little more uniformity, so that a judge would then have to explain why they went beyond that, or under that?

Judge KRAM. Yes, I do. I think that it is important that anyone who is sentenced have some standard so that the judges have a certain limitation in sentences, but I think there should also be room for individual discretion on the part of the judge, because the fact situation in every case is so different.

The CHAIRMAN. Judge, the committee is aware that there are serious problems in some prisons, particularly from the standpoint of overcrowding and effective rehabilitation. What recommendations, if any, can you offer regarding prison reform?

Judge KRAM. Well, my last visit was to Attica several months ago when the State judges held a seminar in Buffalo. I would say that one important element of rehabilitation has to be an emphasis on jobs training. I think from what I saw in the prisons, it was really a matter of containment, and placating the prisoners, rather than emphasis on job training and rehabilitation for the period when they left prison.

The CHAIRMAN. I am glad to hear you say that. I have often felt that if our prisons could be somewhat educational institutions, too, to train these people to make a living where they are not trained. Some people are trained, white collar crime and so forth, but where they are not trained, they could be trained to make a living.

I have often felt, too, that if we had an industry right beside a prison, and that would enable them to work and learn a trade and practice a trade and turn out goods and support themselves, and let part of their earnings go back to the government that sentenced them there to help pay for their expenses in prison. What do you think of that idea?

Judge KRAM. I think that is a very good idea, and I guess essentially I was attempting to say the same thing.

The CHAIRMAN. I don't think I have any other questions. Is there anything else that you want to say at this time?

Judge KRAM. No. Thank you.

The CHAIRMAN. Well, we wish you a successful tenure on the bench, and hope you will be happy in your work.

Judge KRAM. Thank you very much, sir.

The CHAIRMAN. We will now excuse you.

We will take a short recess here, just for a few minutes.

[Recess taken.]

The CHAIRMAN. We will now resume the hearing.

Congressman Carman, without objection, your biography will be placed in the record.

Now, would you care to introduce any of your family or friends who are here?

Mr. CARMAN. Thank you very much, Senator. I would be most happy to. I am very honored to have with me some members of my staff. I have John Palafoutas, Lee Ann Frank. I have in addition to that Felice Pelosi, a friend of mine, John Evans, and my former administrative assistant, Andre LeTendre. All of them are very dear and fine friends of mine who have been kind enough to attend this public hearing.

The CHAIRMAN. All right. We are glad to have all of you here.

TESTIMONY OF GREGORY WRIGHT CARMAN, NOMINEE, JUDGE, U.S. COURT OF INTERNATIONAL TRADE

The CHAIRMAN. Mr. Carman.

Mr. CARMAN. Senator, if I can, just before you start the hearing, I would like to make this comment.

I would like to especially commend the staff, specifically Mr. Short and all his administrative personnel, who have been extremely kind to me and my staff in preparing for these proceedings. They have been extremely courteous, and I think deserve special commendation, and for the record I would like to put in special thanks to Senator D'Amato for the very kind remarks that he made, and I would also like to say what a great honor it is for me to appear before this committee with you as the chairman, a former judge, a colleague of John Napier's, who I hold as a very dear and close friend, who served with me in the U.S. House of Representatives with great distinction, and also Tommy Hartnett who, in addition to John, I am very close friends with.

It is a great honor for me to be here, sir, appearing before you, a very distinguished Senator and chairman of this committee.

The CHAIRMAN. Well, we appreciate your kind remarks, and I am sure Mr, Short does, too.

Mr. Carman, the Customs Court Act of 1980 provided for the U.S. Court of International Trade. This court has jurisdiction over any civil action against the United States arising from Federal laws governing import transactions. What advantage does the new court provide over the previous Customs Court?

Mr. CARMAN. Well, sir, there are two very distinct areas that I consider of significance that were taken up by the new legislation.

One is, it provides for uniformity of decisions, especially in the handling of import matters. In addition to that, the court, of course, was given plenary powers, much the same as we have in the Federal district courts in the United States, which clearly is a benefit for the administration and functioning of this court.

The CHAIRMAN. Mr. Carman, as a former legislator, can you recommend any changes to the Customs Court Act that you feel would improve the new Court of International Trade?

Mr. CARMAN. Well, sir, I think it would be presumptuous of me to set forth many different items, but one that does occur to me that would be appropriate would be for the Congress to consider whether or not the court is limited to too large a degree in handling smaller matters.

At the present time, we have before the court matters that probably amount to between $5 million and $10 million. Where we have litigants of matters of lesser amounts, there is a demand, I think, and listening to other members of the bar who have been concerned in this area to make provision for some way for matters of smaller amounts to be litigated and taken care of before this court.

The CHAIRMAN. Mr. Carman, you have served as a Member of Congress, and now you have been nominated to serve as a Federal judge. With your background, do you believe changes in the law should be reserved to the legislature, whose members can be altered by the voters if the elected officials fail to reflect the values of society?

Mr. CARMAN. Senator, I don't think that I fully appreciated the separation of powers until I became a Member of the U.S. House of Representatives. I clearly believe that the Legislature has the responsibility for making the laws, and I think it is for the judiciary to interpret the laws.

The responsibility for passing the laws is clearly within the province of the Legislature.

The CHAIRMAN. Mr. Carman, in response to a portion of the committee's questionnaire concerning judicial activism, you stated:

> It is my view that the constitutional principle of checks and balances contemplates the judiciary as separate and distinct from the legislative and executive branches of the government. It should not be the function of the judiciary to direct the operation of the legislative or executive departments of government. Courts do not have unlimited authority to attempt to right every government act judges regard as wrong; it is rather the duty of judges to act only within the limits of their powers.

Now, Mr. Carman, where, in your view, does a conscientious judge draw the line between judicial decisionmaking and legislative decisionmaking, and what are the criteria that you would consider in resolving whether or not a decision was the type that should be made by a judge as opposed to an elected legislative body?

Mr. CARMAN. I believe, Senator, that it is necessary for a judge to examine the law, and interpret the law within the framework of what the law means and what the law says.

If the judge wishes to legislate, what he should do is leave the banch and become a legislator. The important part of the criteria, it seems to me, that we should be concerned with insofar as the judiciary is concerned is one that simply leaves to the legislature the policy considerations which are within, certainly, the province of legislative function.

The CHAIRMAN. Mr. Carman, what is the proper application of stare decisis in constitutional law? Specifically, what is the duty of a Federal judge when confronted with a case in which one of the precedents of his court clearly conflicts with the Constitution as that judge interprets it?

Mr. CARMAN. Well, clearly, you should adhere to the Federal Constitution. It is the paramount law of the land, and it seems to me that that is the No. 1 criterion we should be concerned.

Obviously, where the particular matter in question is in conflict with the Constitution, the Constitution must be adhered to.

The CHAIRMAN. Ordinarily, of course, a trial judge would follow stare decisis, unless there was some special reason for not doing that. For instance, if you felt that the case that had been decided by an appellate court was not in accord with the Constitution, then I presume the trial judge would not hesitate to decide the case as he felt the Constitution intended. Would that be your thinking?

Mr. CARMAN. Absolutely. You are totally correct, yes, sir.

The CHAIRMAN. Some judges have taken it unto themselves to legislate. In other words, if things are not what they ought to be in society, they have practically written laws, or altered laws, or amended laws to give the effect to the law that they feel it should have, rather than for the Congress to make the changes.

How do you feel about that?

Mr. CARMAN. Well, Senator, I think I feel about it the same way you do, very frustrated. As I mentioned before, it seems to me that legislators should legislate, and judges should judge the law as it has been passed by the legislature. We don't need to have frustrated judges as legislators. If they really feel they have to legislate, I think what they should do is run for the Legislature.

The CHAIRMAN. I think those are all the questions I have. Do you have anything you would like to say?

Mr. CARMAN. Only this, and that is that I would like to thank you for the courtesies that you have extended to me. It has been a great honor for me to appear before this committee, and I thank you for all the considerations that you and your staff have given to me.

The CHAIRMAN. Well, we hope you have a happy and succesful tenure on the bench.

I believe Senator Moynihan has a statement he will want to place in the record on behalf of both these nominees. That will be accepted by the committee.

[The prepared statement of Senator Moynihan follows:]

PREPARED STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN

Mr. Chairman, I should like to call to the attention of my colleagues the nomination of Shirley Wohl Kram, a Family Court Judge in Manhattan since her appointment in 1971, to be United States District Judge for the Southern District of New York. Judge Kram's nomination has received the approval of the American Bar Association.

Following her graduation from Brooklyn College Law School in 1950 and her admission to the New York State Bar a year later, Judge Kram began her practice of the law as staff attorney for the Legal Aid Society. In 1954, she joined the law firm of Simons & Hardy as an associate attorney. A year later, she left the firm to begin a private practice, where she remained until rejoining the Legal Aid Society as a staff attorney in 1962. Judge Kram was also a practicing Law Institute lecturer during the 1970's and a Baruch College Adjunct Professor from 1979 to 1980.

She has been an able judge and is to be congratulated on her nomination.

PREPARED STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN

Mr. Chairman, I should like to bring the attention of my colleagues the nomination of Gregory Wright Carman, a former United States Congressman, to be a judge of the United States Court of International Trade. Congressman Carman's nomination has received the approval of the American Bar Association.

Greg Carman graduated from St. John's University and was admitted to the New York State Bar in 1960. He began his law career with the firm of Carman & Callahan the following year. In 1964, Congressman Carman joined the firm of Carman, Callahan, Carman and Sabino. Beginning in 1966, he was also deputy village attorney and deputy prosecutor of Farmingdale, New York.

Aside from his work in the legal profession, Congressman Carman has served in two legislative capacities; as a Town Councilman in Oyster Bay, New York, from 1972 to 1981, and more recently as the U.S. Congressman from New York's third congressional district during the 97th Congress.

Mr. Carman's term in Congress coincided with the latter two years of my own first term. I had occasion to work with him and learn first hand of his abilities. He is to be congratulated on his nomination.

The CHAIRMAN. We now, unless something else has come up, stand adjourned.

[Whereupon, at 2:.37 p.m., the committee adjourned, to reconvene subject to the call of the Chair.]

BIOGRAPHIES

SHIRLEY WOHL KRAM

NOMINEE, U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF NEW YORK

Birth: December 25, 1922, New York, N.Y.

Legal residence: New York.

Marital status: Widow, one child.

Education: 1940-41—Hunter College, evenings, New York City; 1940-47—City College, evenings, New York City; 1947-50—Brooklyn Law School, LL.B. degree.

Bar: April 2, 1951—New York.

Experience: 1951-53—Staff attorney, Legal Aid Society; 1954-55—Associate attorney, Simons & Hardy; 1955-60—Private practice; 1962-71—Staff attorney, Legal Aid Society; 1971 to present—Family Court judge, Manhattan; 1970's—Lecturer, Practicing Law Institute; 1979-80—Adjunct professor, Baruch College.

GREGORY WRIGHT CARMAN

NOMINEE, JUDGE, U.S. COURT OF INTERNATIONAL TRADE

Birth: January 31, 1937, Farmingdale, N.Y.

Legal residence: New York.

Marital status: Separated, four children.

Education: 1954-58—St. Lawrence University, B.A. degree; 1956-57—University of Paris, exchange student; 1958-61—St. John's Law School, J.D. degree.

Bar: 1961—New York.

Military service: 1962-64—U.S. Army, honorably discharged.

Experience: 1961-62—Carman & Callahan, Farmingdale, N.Y.; 1964 to present—Carman, Callahan, Carman and Sabino, Farmingdale, N.Y.; 1966 to present—Deputy prosecutor—Deputy Village attorney, Village of Farmingdale; 1972-81—Town Councilman, Town of Oyster Bay; 1981-82—U.S. Congressman, House of Representatives.

CONFIRMATION HEARING ON:

STEVEN ROGER SCHLESINGER AND ALFRED S. REGNERY

WEDNESDAY, APRIL 6, 1983

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met pursuant to notice at 4:55 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Senators present: Mathias, Specter, Metzenbaum, and DeConcini.

Staff present: Duke Short, chief investigator; Bill Christensen, and Allan Spence, investigators; and Mary Lynn Batson, investigative clerk.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. Today's hearing is to consider confirmations by the Senate. The first nominee, I believe, is Dr. Steven Roger Schlesinger, of Maryland, to be Director of the Bureau of Justice Statistics. If you will come around, Dr. Schlesinger, and have a seat.

And, Mr. Regnery, we can save time and swear in both of you at once.

Do you swear the testimony you will give in this hearing will be the truth, the whole truth and nothing but the truth, so help you God.

Dr. SCHLESINGER. Yes.

Mr. REGNERY. Yes.

The CHAIRMAN. I see we have the ranking member of the committee here to introduce you, I presume. Senator Mathias, we will be very pleased to hear from you.

STATEMENT OF HON. CHARLES McC. MATHIAS, JR., A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MATHIAS. Thank you, Mr. Chairman. It is a pleasure to—it is hard to say "introduce"—Steven R. Schlesinger. He has been before this committee on a previous occasion. He is from Silver Spring, Md.

Mr. Schlesinger has been nominated by the President to be the new Director of the Bureau of Justice Statistics. I want to take this opportunity of applauding the President for filling this important position with a permanent director, who can insure that the Bureau runs effectively and productively.

And, I applaud the President for nominating a man with Steve Schlesinger's credentials. He graduated cum laude from Cornell. He went to Claremont, where he received his M.A. and Ph. D., and passed his doctoral examinations with highest honors.

Mr. Chairman, the primary focus of the Bureau of Justice Statistics is the statistical study of crime in our society. And, although Mr. Schlesinger is not a lawyer, throughout most of his career he has shown a strong interest in the questions confronting our criminal justice system today. Since 1981, he has been in a position to devote a considerable amount of attention to the subject, serving as the associate chairman of the department of politics at Catholic University.

We have met before, as I say, because he has testified before the Criminal Law Subcommittee regarding legislation affecting the exclusionary rule. And he was invited to appear at that time because of his many books and articles he has published on that subject.

Mr. Schlesinger has written and lectured widely on other topics of the law, as well, primarily in the criminal justice area. His work has appeared in at least five law reviews as well as other notable journals and collective volumes.

I think it will be very beneficial to have such a distinguished social scientist in charge of the Bureau of Justice Statistics.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Dr. Schlesinger, it does not hurt you a bit that you have the ranking member of this committee to endorse you so highly. We are glad to have you here.

Now, would you like to have the members of your family just stand up and introduce them?

Dr. SCHLESINGER. Mr. Chairman, I would like to introduce my special assistant, Prof. Ralph Rossum.

The CHAIRMAN. Any special friends or the family.

Dr. SCHLESINGER. My wife is employed by the General Counsel's Office of the Health and Human Services Department and because of the new social security legislation, she is quite busy and could not make it.

The CHAIRMAN. Pull that microphone closer to you a little bit more.

We are glad to have you with us, Mr. Schlesinger.

Dr. SCHLESINGER. Thank you, Mr. Chairman.

The CHAIRMAN. We have another Senator here before you begin. I want to take him next and let him introduce his recommendation.

Mr. Regnery, if you will come up along with Senator Laxalt.

We are very pleased to have the gentleman who is the closest man to the President of the United States here to introduce you, Mr. Regnery. We will now hear from Senator Laxalt.

STATEMENT OF HON. PAUL LAXALT, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator LAXALT. Thank you, Mr. Chairman, and members of the committee.

It is a pleasure to join in introducing Mr. Alfred Regnery as President Reagan's nominee for the job as Administrator of the Office of Juvenile Justice and Delinquency Prevention.

As you all know, Al is no stranger to you or to the committee. During the 95th and 96th Congresses, he served ably as my counsel on the Judiciary Committee.

After the last Presidential election, he left to join the Reagan administration as a Deputy Assistant Attorney General with the Department of Justice.

I welcome this opportunity to express my strong support for Mr. Regnery and to offer my assistance in gaining early committee approval.

During the last 3 years that Al served as my chief counsel, I came to know him as a man of perseverence, as a man of energy, and one of extremely high intelligence. As many will soon learn, he shares an approach on which I have always insisted in my office, and that is our door is always open to anyone having an interest in an issue before the committee. No one is denied an opportunity to be heard, regardless of ideology or political stripe. And I think that applies to my colleagues uniformly on this committee as well.

Moreover, Al has demonstrated skills as an administrator, both here and at the Department of Justice. It will serve him well, I feel, at OJJDP. That agency has been without a permanent administrator now for some 2 years. Al Regnery will bring to it innovation and a new sense of mission and enable OJJDP to better serve both the youth of our Nation and the organizations concerned with the serious consequences of juvenile crime upon our society.

As my counsel, as many of my colleagues here will recall, Al Regnery and I began to rethink certain traditional notions of our criminal justice system. I believed then, as I do now, that our criminal justice system ignored the plight of the crime victim, and that the role of the victim in the criminal justice process needed to be enhanced.

At that time, LEAA did not fund victims' programs or services. We worked to change that policy, and passed legislation that designated certain moneys to be spent in the victims area.

Last year, our earlier efforts resulted in a major victims' bill becoming law. I say this, not to recite ancient history of which all of you are fully aware, but because my mail, and perhaps yours, and some parts of the media are charging Mr. Regnery with challenging the traditional tenets of the juvenile justice system.

As I have found since I came here to Washington, and I am sure you have as well, this usually means that someones ox is getting gored and certain vested interests find their positions in jeopardy. If these interests cannot undergo careful scrutiny, perhaps the time for such a review is at hand. What I am saying essentially is that here in government there is no room for sacred cows. Simply because it has been done in a given fashion in the past does not mean that it need be done in that particular fashion in the future. We are in a period of constant review both here in Congress and downtown.

So, my colleagues, members of this committee, I want all of you to know that I applaud Al Regnery for conducting his review and for his innovative approach.

I know that he will work with members of this committee and all other interested parties to insure that the intent and spirit of the Juvenile Justice and Delinquency Act of 1974, as amended, is carried out. That he must do. He cannot substitute his judgment for what the law is.

We have often stated within the confines of this committee, we are truly a government of laws, not men. So any aspersions that have been laid to his door to the effect that he is going to do his own thing and walk away from the law, I find to be wholly without basis or foundation.

For all these reasons, gentlemen, I wholeheartedly support the President's selection for this very important position.

I thank the chairman and I thank the members of the committee.

The CHAIRMAN. Thank you very much, Senator Laxalt. Your high endorsement of Mr. Regnery should mean a great deal to him. You are a very prominent member of this committee. I do not know of any man in the Senate who is held in higher esteem than Paul Laxalt.

Senator LAXALT. Thank you, Mr. Chairman and I thank the members of the committee.

The CHAIRMAN. Now, is Senator Warner here yet? I believe he wanted to say a word on behalf of you, Mr. Regnery.

Without objection, we will place the biographies of Dr. Schlesinger and Mr. Regnery in the record.

The CHAIRMAN. We can go ahead with the questions.

Senator Laxalt, feel free to stay or, if you have to leave, we understand how busy you are.

Senator LAXALT. I must leave. I am sorry.

TESTIMONY OF DR. STEVEN ROGER SCHLESINGER, NOMINEE, DIRECTOR, BUREAU OF JUSTICE STATISTICS

The CHAIRMAN. I believe Dr. Schlesinger is the first on the list, so we will take him first.

Dr. Schlesinger, the Bureau of Justice Statistics recommends standards for the generation of data, analysis, and the dissemination of statistics, and provides for the security and privacy of criminal justice statistics. Is the information you gather used only for research and statistics purposes, or is it provided to law enforcement agencies for operational purposes?

Dr. SCHLESINGER. Mr. Chairman, the information, data, and statistics that we gather are used only for research and statistical purposes. The reason for that is that in many instances we would have difficulty gathering the information unless it were under the mantle of privacy or confidentiality.

The CHAIRMAN. Dr. Schlesinger, the current legislation authorizing the Bureau of Justice Statistics declares that its Director "shall have experience in statistical programs."

What experience do you have that would qualify you for this position?

Dr. SCHLESINGER. Mr. Chairman, for the past 10 years or so, I have been engaged in criminal justice research. Of course, anyone engaged in criminal justice research will have constant contact with statistics in that field, statistics, for example, having to do with the number of offenses, number of offenders, conditions of confinement, and so forth. More specifically, I have written a number of articles that take a specifically statistical approach to criminal justice or to the law. One of them deals with Associate Justice Harry Blackmun of the U.S. Supreme Court.

It has been remarked that Justice Blackmun takes a particularly statistical or empirical view of his decisionmaking responsibilities on the Supreme Court. That article was an attempt to evaluate the strengths and weaknesses of that approach.

I have also written a number of articles on the deterrent effect of the exclusionary rule. That subject, of course, can be dealt with only in terms of statistics. In the articles I have written on that subject, I made an attempt to describe and evaluate in fairly detailed terms the research that had been done on the deterrent effect of the exclusionary rule.

Generally, my perspective has been as a user of criminal justice statistics, not really as a producer of them. But since the BJS, the Bureau of Justice Statistics mandate is to collect, analyze, and disseminate criminal justice statistics, I believe that my background as a user of statistics and data is highly appropriate for directing and evaluating Bureau of Justice Statistics activities.

The CHAIRMAN. Dr. Schlesinger, the Senate this term must consider reauthorizing the Bureau of Justice Statistics. In terms of structure, the administration's proposal in the Comprehensive Crime Control Act of 1983 represents a departure from the current arrangements. Do you believe that you could effectively administer BJS under the proposed structure?

Dr. SCHLESINGER. I believe that I can administer BJS effectively under the proposed structure. I fully support the President's proposed legislation in this area. In fact, I believe the President's proposed legislation is preferable to the situation as it currently exists. This is because the President's proposed legislation would create a new Assistant Attorney General in the Department of Justice. That Assistant Attorney General would have the responsibility for coordination of the activities of the JSIA agencies. I believe that such coordination would go a long way toward rationalizing the programs of the JSIA agencies. I believe that the kind of coordination that the Assistant Attorney General could provide would be most helpful. For that reason, and some others, I fully support the President's proposed legislation.

The CHAIRMAN. Dr. Schlesinger, what new direction or policies do you anticipate for the Bureau of Justice Statistics?

Dr. SCHLESINGER. There are five new directions that I would anticipate for the Bureau of Justice Statistics:

First, we will be publishing over the next months and years a series of focused reports, which will be of particular use to policymakers.

One thing that has struck me almost from the first day I arrived at the Bureau of Justice Statistics is that the Bureau has collected a great many very important statistics for quite a few years. But what also struck me is that we have not always used those statistics in a way that illuminates the crucial problems for policymakers in the criminal justice system; problems such as career criminals, sentencing, correctional difficulties. And one of the changes that I would initiate is a series of focused reports available to policymakers and, of course, to the public, which will focus our excellent data on the crucial problems that policymakers face in the whole field of criminal justice.

Second, I believe that it is important that the Bureau of Justice Statistics publish its statistics and data more quickly than has been the case in the past. Particularly in the correctional area, if I can use that as an example, some of our correctional data has been published 1, 2, 3 years after the fact, so to speak, at a point when it really is not very useful anymore to practitioners in the field.

So, the second thing that I would hope to do is to have our data, especially the correctional data, published on a more timely basis.

Third, I am concerned that the Bureau of Justice Statistics is not currently doing enough in the area of police statistics. So, over the next few months, I will be looking at a number of options as to what the Bureau could do to increase its activity in the area of police statistics.

Fourth, the Bureau currently has a number of statistical series in the correctional area. Specifically, we have a prison and prison inmate series, a jail and jail inmate series, a parole series, and a probation series. What concerns me is that those series are really too fragmented. They are too separated one from the other. What I would propose to do is to have one unified correctional series covering jail, prison, parole, probation, the point of which would be to follow an offender, an individual offender, from the moment he initially comes into the correctional system, be it in jail or in prison, all the way through to that person's final release from the correctional system.

And, finally, Mr. Chairman, I would support the development of information systems to facilitate victims' assistance. I believe that the country is experiencing an increasing awareness of the plight of victims. Therefore, I believe it is extremely important that the Bureau develop data and statistics that will facilitate this whole area of victims' assistance.

Those are the five major program changes that I would anticipate, Mr. Chairman.

The CHAIRMAN. Dr. Schlesinger, under either the existing or proposed legislation, what role do you see the Bureau of Justice Statistics playing in research and development of information systems?

Dr. SCHLESINGER. I see the Bureau of Justice Statistics role as a fairly narrow one, which would be limited to support of information systems which directly provide national statistical data, principally on those subject matters of concern to you, to the administration and to the American people.

The CHAIRMAN. The distinguished Senator from Arizona, Mr. DeConcini.

STATEMENT OF SENATOR DENNIS DeCONCINI

Senator DECONCINI. Mr. Chairman, thank you. I have no questions of Dr. Schlesinger. I do want to applaud his appointment by the President. I have had an opportunity to work with Dr. Schlesinger when he was a political science professor at Catholic University. He served as an unpaid consultant to the Constitution Subcommittee last year regarding the exclusionary rule and helped us immensely. He also has testified before the Criminal Law Subcommittee on the exclusionary rule. I wish you every success in the job you are doing now. I am pleased to see that you are before us for confirmation, applaud the appointment, and look forward to working with you.

Dr. SCHLESINGER. Thank you, Senator DeConcini.

The CHAIRMAN. Thank you, Senator.

The distinguished Senator from Pennsylvania.

Senator SPECTER. Thank you, Mr. Chairman. I have a number of questions to submit for the record. I would like to ask just one or two questions of Professor Schlesinger.

I note your excellent record and your extensive writing in the academic field, and I compliment you on that. That is obviously very difficult, very time consuming and it is quite an accomplishment.

Dr. SCHLESINGER. Thank you, Senator Specter.

Senator SPECTER. I was interested in your comments about following people in custody. One of the concerns that I have had, and continue to have, is what effect efforts at rehabilitation have on offenders.

From the studies that I have seen and have searched for, I find totally inadequate data to draw any conclusions as to where you really attack the problem of rehabilitation and make an evaluation as to what is successful.

I was interested in your comment about your interest in following people who are incarcerated. What statistics, to your knowledge, are now available which would be of assistance in evaluating rehabilitation efforts?

Dr. SCHLESINGER. I am not aware that the Bureau keeps statistics that would be of immediate help in assessing the rehabilitative function of the correctional system. One thing that we have done very recently, which may be of some, at least, marginal interest here is to send a letter to our State Statistical Analysis Centers, the SAC's, to find out what information they would have about recividism, that is, what followup information they would have about the crimes committed by inmates who have left the correctional system. That would be one link I would think, in tackling the whole rehabilitation question, because, in order to know how successful a rehabilitation effort is, one has to have some sense of what has happened to an inmate once he has left the correctional system.

Senator SPECTER. What ideas would you have about putting into effect statistical gathering of data which would give us some insights into what is effective as a rehabilitation tool?

Dr. SCHLESINGER. I think that would be an extremely important effort. The whole rehabilitation question is one that has interested me for some time. If the funds were made available, it seems to me that that would be a significant contribution the Bureau of Justice Statistics could make.

Senator SPECTER. It is obviously difficult to make an assessment on horseback as to what funding would be required. But I would be interested in your thoughts on this subject as soon as you could provide that kind of information. I would be interested to know how you would structure the gathering of data on that subject.

In the Juvenile Justice Subcommittee, we held an extensive series of hearings last year trying to find a critical point in the life of the juvenile when some rehabilitative effort would be the most useful.

Professor Wolfgang testified on this subject as well as many others. I refer to him because he had some especially cogent testimony to offer on the question at what point should you try to intercept the juvenile and he said, oddly enough, after the third offense, because there are so many first offenses by juveniles, and so many second offenses that it is very difficult to apply resources until that point. But that is a subject that I think would be important to have studied on the whole spectrum of offenders to try to pick out the point in the juvenile cycle and also the point in the adult cycle.

I am asked with some frequency what are the effective rehabilitation centers, what correctional systems work in this country. I was asked that question yesterday in Harrisburg.

What would your answer be to that question, which of our correctional systems in this country works?

Dr. SCHLESINGER. I would have some difficulty answering that question because the whole area of juvenile corrections is really one that has been given to the Office of Juvenile Justice and Delinquency Prevention. It is not an area that we deal with with any frequency.

Senator SPECTER. All of the statistical data lies on their side of the table?

Dr. SCHLESINGER. In recent years, they have been collecting and analyzing the statistical data. I would, however, be glad, for the record, to respond to your questions about what kinds of statistics would be needed to set up, maintain and perhaps even evaluate the success of various rehabilitative efforts.

Senator SPECTER. My own sense is, and I have introduced legislation on the subject, to try to encourage States to release prisoners who are not functional illiterates without a trade or skill so that we can have some realistic rehabilitation. If we could have some measuring device, my sense is it would be well worth the investment and where we find that people are career or habitual criminals, we have to really separate them from society on perhaps a permanent basis. But we are not fortunate enough to have any statistical base to really make informed judgments about what kind of rehabilitation works or to have a determination as to what would be sensible from the point of view of an investment. With your background and scholarship, you would be well-suited to make that kind of an inquiry. My sense is that we would be well advised and willing to support funding for such an important program.

Dr. SCHLESINGER. Let me just respond very quickly. As I have said, because of the existence of OJJDP, this has not been an area that I have given a great deal of attention to in the 90 days or so that I have been on board. I will be glad, though, to try to respond to your concerns.

Let me add just one other thing: The Bureau of Justice Statistics published about a month ago, under a grant given to Search Group, Incorporated, a monograph dealing with the question of the availability of juvenile records to adult courts. This, as you know, has been a very important question. It has been debated quite widely across the country. That book, I believe, is a very fair, balanced attempt to examine the arguments on both sides, for and against the availability of juvenile records to adult courts.

We published that particular book because of our legislative mandate, a particular legislative mandate that we have to deal with the issues concerning the privacy, security and confidentiality of data. For that reason, we had Search Group write that book and, I would very much recommend it to your attention as a balanced discussion of that problem.

Senator SPECTER. Professor Schlesinger, my inquiry about statistics on rehabilitation success—I am not limiting it to juveniles. I am interested in adult facilities as well. I think we have to apply it beyond the juvenile field to first or second offenders, in an effort to try and rehabilitate those who can be, so that if we find those who cannot be, we have a basis for being very tough on sentencing. So I would be very interested in your findings.

Thank you very much.

Dr. SCHLESINGER. I will respond to you for the record, Senator Specter.

[Responses of Dr. Schlesinger to questions of Senator Specter appear in the questions and answer section.]

Senator SPECTER. Thank you.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Specter.

Senator Metzenbaum, do you have any questions?

Senator METZENBAUM. No questions.

The CHAIRMAN. Senator Mathias had to go to another meeting. He will be back in a few minutes. I understand he wants to ask a few questions. So, if you will just be seated until he returns. In the meantime, we will hear from Mr. Regnery.

Mr. Regnery, come around. You may want to introduce your family and any special friends you may have here, if you care to.

Mr. REGNERY. Thank you, Senator. I would like to introduce my family, first, my wife, Christina, who is wearing, she tells me, the Nancy Reagan red dress. And my oldest son, George; my daughter Louise; my son Alfred, and my youngest son, Charles.

TESTIMONY OF ALFRED S. REGNERY, NOMINEE, ADMINISTRATOR, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

The CHAIRMAN. Mr. Regnery, it has been reported that you have taken the position that the 1980 amendment to the Juvenile Justice and Delinquency Prevention Act, mandating removal of juveniles from adult jails and lockups, has achieved significant progress, so that formal grant resources in many States can now be redirected toward other program priorities. If that, in fact, is your opinion, do you have supporting evidence to show that significant progress in this area has been made?

Mr. REGNERY. Yes, Senator. First of all, in the area of deinstitutionalization of status offenders, we recently submitted a list of States to the Appropriations Committee, which I will make available to this committee, pointing out which States have complied with the mandate of the statute that status offenders be removed from institutions. I believe that 29 of those States are now in complete compliance. Another 8 States are in substantial compliance; and the rest, there are 45 States in the program alltogether, so the others are not in compliance.

On the question of separation, again I can give you a list, and I do not know what the numbers are off the top of my head. They are more or less similar to those on deinstitutionalization. On the jail removal question, the statute requires that States remove all juveniles from jails by December 1985. And we are working with those States on a continual basis to help them comply with that mandate by December 1985. It is difficult to generalize as to what the progress is because it differs so from State to State. But, again, for the record, I could supply that information for you.

In essence, I guess our people have concluded that as much as 85 percent of the present statutory mandate has been completed. Our formula grant program is about a $40 million program, and much of that money has been used for deinstitutionalization and the other mandates of which you spoke. We believe that it is probably time that an increased amount of those funds can be used for things such as serious and violent crime. Incidentally, the regulations that were published in the Federal Register before I came to the Office of Juvenile Justice do encourage that 30 percent of formula grant funds be used for violent and serious crime. We will be investigating to find out how much more States may wish to use.

The CHAIRMAN. Would you supply that information for the record?

Mr. REGNERY. Yes, I will.

[Subsequent to the hearing, Mr. Regnery supplied the following information:]

SUMMARY OF PARTICIPATION IN THE JJDP ACT AND COMPLIANCE WITH SECTIONS 223(a)(12) AND (13)

PRESENT STATUS

The initial year States and territories could participate in the JJDP Act was Fiscal Year 1975. During the initial year of participation, 45 of the 56 eligible States and territories received an award. Six States withdrew from participation prior to the Fiscal Year 76 awards. This made a total of 39 States and territories participating for the full fiscal year. During Fiscal Year 76, four additional States and territories began participation, thus making a total of 43 participating States.

Four more States began participation in Fiscal Year 77 which made a total of 47 States receiving an award. However, two States withdrew from participation prior to the Fiscal Year 78 award, thus making a total of 45 States and territories participating for the full 1977 fiscal year.

During Fiscal Year 78, another five States began participation. No State receiving a Fiscal Year 78 award withdrew from participation, thus a total of 50 States participated during the full 1978 fiscal year. In Fiscal Year 79, an additional territory became eligible for participation, thus raising the number of eligible States and territories to 57. During Fiscal Year 79, no State withdrew participation, but one additional territory began participation. This made a total of 51 States and territories participating during Fiscal Year 79. During Fiscal Year 81, one State renewed participation, one State began participation, and one State withdrew leaving 51 States and territories participating in the JJDP Act of 1974, as amended. During Fiscal Year 82 one State renewed participation making a total of 52 participating States and territories. The five States not participating in the Act are: Nevada, North Dakota, Oklahoma, South Dakota, and Wyoming.

Section 223(a)(15) requires States to provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and nonsecure facilities to insure that the requirements of subparagraphs (12)(A), (13), and (14) are met, and for annual reporting of the results of such monitoring to the Administrator. December 31 of each year has been established as the date for submitting the annual monitoring report. According to the most recently submitted and reviewed State Monitoring Report, the following, to date, is a summary of compliance with Section 223(a)(12)(A) and (13).

SECTION 223 (a) (12) (A)

A. Of the 52 participating States, 43 have participated for five or more years and are thus required to achieve full compliance with Section 223(a)(12)(A) of the Act to maintain eligibility for fiscal year 1983 Formula Grant funds. Of these 43 States, a determination has been made that the following 34 States and territories are in full compliance pursuant to the policy and criteria for full compliance with de minimus exceptions.

American Samoa, Arkansas, California, Connecticut, Delaware, District of Columbia, Guam, Idaho, Indiana, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Texas, Trust Territories, Vermont, Virginia, Virgin Islands, Wisconsin.

Nine of these 43 States have not to date been found to be in full compliance with the deinstitutionalization requirement. The nine States are:

Alaska, Arizona, Colorado, Florida, Georgia, Montana, New Mexico, Tennessee, Washington.

B. Of the 52 participating States, eight must achieve substantial or better compliance to be eligible for fiscal year 1983 formula funds and four of these States (e.g., designated with *) must achieve full compliance for fiscal year 1984 formula fund eligibility.

*Alabama, *Hawaii, *Kansas, *Mississippi, North Carolina, Northern Marianas, Utah, West Virginia.

All eight have demonstrated substantial or better compliance and the Northern Marianas has been found in full compliance.

C. One of the 52 participating States, Nebraska, must demonstrate progress to maintain eligibility for fiscal year 1983 funds and must achieve substantial or better compliance for fiscal year 1986 formula fund eligibility.

SECTION 223 (a) (13)

There are 29 States which have demonstrated compliance with Section 223(a)(13) of the Act. Twenty-two other States have reported progress while one reported no progress.

Those 29 States which have been found in compliance with the separation requirements are:

American Samoa, Arizona, Arkansas, Connecticut, Delaware, District of Columbia, Guam, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Northern Marianas, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Texas, Vermont, Virginia, Virgin Islands, Wisconsin.

The 22 States reporting progress are:

Alabama, Alaska, California, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, New Mexico, Ohio, Oregon, Trust Territories, Utah, Washington, West Virginia.

The one State reporting no progress is Tennessee.

The **CHAIRMAN.** Mr. Regnery, your critics also report that you have decided to use Office of Juvenile Justice and Delinquency Prevention funds for the apprehension and prosecution of juvenile criminals, rather than for juvenile delinquency prevention. Is that correct, and will you please tell the committee where you feel your office should place its emphasis?

Mr. **REGNERY.** Yes, Senator. Delinquency prevention is a difficult area to get a handle on. There really is not any definition, I guess, of what delinquency prevention means. In fact, within our office, there is a fairly intense debate as to exactly what it means.

We have spent a great deal of money on things that we call delinquency prevention over the years. The statute has a good many things in it besides prevention, including the mandate that we try to do something about serious and violent crime. We are putting together some new programs which will be prosecutorial in nature to deal with serious juvenile crime.

I have asked my staff to determine what percentage of our present budget is being used for prevention and they have used a rather conservative definition of prevention and have found that of the money we have for 1983, the programs we put together for 1983, about 20 percent of that money, the discretionary money that is, goes for prevention and another 20 percent of the formula grant money is being used by the States for prevention.

I should point out that the Federal Government, according to our analysis, runs 26 different delinquency prevention programs, for a total of $1.8 billion.

Inasmuch as our budget is only $70 million, we have felt there is little we could add to programs costing $1.8 billion with the exception of coordination of these programs. In fact, the statute does call for us to coordinate other Federal programs. We are trying to do that through the Coordinating Council, which was set up by our statute. We have had a number of meetings already since I have taken over to try to further that coordination effort to use our influence as much as we can to leverage the other departments to increase their efforts in delinquency prevention.

So it is not accurate to say that we have abandoned prevention. I think we are trying to redirect our efforts to adjust the system because I think we have the expertise to be able to do that, being in the Justice Department.

Also, there are a great number of community organizations which are involved directly with prevention. We are doing what we can to try to help them in training and technical assistance. We currently have a $500,000 contract with an organization that trains those groups in their efforts on delinquency prevention. And that is a very effective undertaking.

I have signed, since coming to office, grants totaling over $1 million for law-related education, which is a prevention program, and a number of other programs as well, which are directly prevention oriented.

Our office did run a $20 million demonstration project on prevention between 1977 and 1980. The evaluation of that program stated that it was not successful. The evaluators believe that all it showed was what does not work for prevention and, therefore, it has been my position that to try to enter into another demonstration project, competing with the many other Federal programs, would not be an efficient use of Federal dollars. And I think, in fact, I would be abusing my fiduciary duty if I did that.

The CHAIRMAN. Mr. Regnery, I believe you recently decided not to renew a contract with the Westinghouse Corp., under which technical assistance in the area of delinquency prevention has been provided in several States, including my State of South Carolina. Would you please tell me why you took that action?

Mr. REGNERY. That is correct, Senator. We did not renew that contract. It was an $800,000 contract with the Westinghouse Corp.

We reviewed it very carefully before we decided not to go ahead with it for another year, based mostly on the fact that we thought it was not cost effective. It was providing technical assistance to schools. They were not schools in inner cities, but more schools that serve the general population. The main emphasis was to try to change the curriculum of those schools. And as we looked at what the Education Department was doing, and others in the Federal Government, in primary prevention, which is that prevention which goes to the schoolchildren generally, we found that our efforts again were so minimal that we could not compete with them.

The number of people using the Westinghouse contract was, I believe, 7 or 8 grantees, plus 10 or 12 States. The States were using it on a limited basis. We checked with the ones who had used it. They found simply that much of the assistance was of minimal value, and we thought we could get more value for our money by putting it elsewhere.

The CHAIRMAN. Mr. Regnery, you have a reputation for being a man of character and ability, but you do not have an extensive background in the juvenile justice system. Would you tell us just why you feel that you are qualified to hold this position?

Mr. REGNERY. Yes. When I was in private practice in Wisconsin, Senator, which was for a period of 7 years, I handled several matters in the juvenile court, but I confess they were not extensive. I also did a certain amount of criminal work. I have been a student of criminology, I guess, during the entire period of my professional career. I have served on a number of committees involving criminal justice and victims of crime. While I was on the staff of the Judiciary Committee, I worked intensively on many criminal bills and various other criminal matters. Additionally, I have rather extensive administrative experience, particularly as a Deputy Assistant Attorney General in the Lands Division of the Justice Department, where I oversaw some 120 people and a large litigation docket.

Additionally, of course, I have a rather extensive staff which is well versed in juvenile justice issues.

It has been my feeling, I guess, since I have been at OJJDP, which is since November, that in many ways I think it may be more advantageous to have somebody in that position who does not come from the juvenile justice system, simply because I think it may be easier to challenge some of the orthodoxy that exists in the juvenile justice system and to look at things from a different point of view, to bring other people in who can look at them from a different point of view, than if one were to come from the system. Therefore, I have found so far, I guess, that my lack of direct involvement in that system has been more of a benefit than a hindrance.

The CHAIRMAN. Mr. Regnery, the administration has requested zero funding for fiscal year 1984, do you support that request?

Mr. REGNERY. Senator, I was not present when that decision was made, and I assume that it was made at OMB, and that a lot of other things were involved besides the question of juvenile justice; that is, generally, what the budget of the Justice Department was going to be, and what the budget of other offices in Government were going to be, and all the other things that make up the Federal budget. And, therefore, I guess I cannot comment on that. I can say, however, that in the event the Senate and the House do appropriate money for OJJDP, I will be able to use that money I think very well. I think we will be able to do so pursuant to the mandates of the statute, and I think we will be able to carry out many of the objectives that the Attorney General and the President have been talking about as far as crime control is concerned and, therefore, I think that the statute will certainly be given effect. I guess that is as much as I can say about it.

The CHAIRMAN. Do you feel that it is a function of the Federal Government to address the area of juvenile delinquency? In other words, is this a Federal function, or is it primarily one of the States?

Mr. REGNERY. Well, juvenile delinquency, of course, is a matter, for the most part, of States. On the other hand, crime control has, I guess, become something that the Federal Government has gotten itself very deeply involved in, and I think rightfully so. I do not know off the top of my head how much money is spent by the Federal Government on controlling crime. Juvenile crime, though, makes up 40 percent of the serious and violent crime that is committed in the United States. And, therefore, if the Federal Government is going to be involved in crime control in the States, the Federal Government should certainly say something about juvenile crime as well. Obviously, when a program such as ours is going to be continued, there are many questions of federalism and other things that come to mind, which need to be addressed.

I think that the Federal Government should be involved in addressing questions of juvenile crime and juvenile delinquency. It has been for many years and I am sure it will continue to be, regardless of what Congress decides to do with OJJDP.

The CHAIRMAN. Do you feel it is an important issue?

Mr. REGNERY. I certainly do.

The CHAIRMAN. And you probably feel that each has a responsibility here?

Mr. REGNERY. That is right.

The CHAIRMAN. Both the Government and the States?

Mr. REGNERY. Right.

The CHAIRMAN. The Washington Post, last Sunday, April 3, reported that you had cut off several grantees who appeared on a "hit list" supplied to your office by the National Council of Family and Juvenile Court Judges. Mr. Regnery, are you aware of such a list, and did you take such action?

Mr. REGNERY. Well, I have never seen that hit list, Senator. I have heard about it ever since I came to the office. But, for some reason, which, as I look back on it, surprises me, nobody ever gave it to me. So I do not know who is on it. All I do know is that the one grantee that was mentioned by the Post, which is the Institute for Court Management in Denver, run by Ted Rubin, apparently is on the list, and we did refund that grantee in January. In fact, we gave him, I think, precisely the same amount they had gotten last year. So, as I say, I do not know who else is on it, and I cannot comment on whether or not they have been cut off.

The CHAIRMAN. I presume that you feel that you will use money in the best way possible without regard to any partisan politics?

Mr. REGNERY. That is right.

The CHAIRMAN. Mr. Regnery, would you give me your position on the effectiveness of community-based organizations?

Mr. REGNERY. Yes. In the area, particularly, of crime prevention and juvenile delinquency prevention, I think that community-based organizations are probably the most effective manner of control. Prevention happens in the family, and it happens in schools, and in the YMCA's and Boy Scouts, Boys Clubs, and all these other organizations, notably community-based organizations, around the country.

We have many grants to community-based organizations and, as I mentioned a minute ago, we have a contract with one organization that trains community-based organizations. We are trying to look at ways in which we can increase our support of those organizations. I think they are certainly to be applauded, and they do a very good job.

The CHAIRMAN. Mr. Regnery, in 1972, the Youth Services in my State came up with a slogan, "Have you hugged your kid today." I understand that you have a sticker on your car that says, "Have you slugged your kid today?"

Mr. REGNERY. That is right.

The CHAIRMAN. What was the purpose of putting that type of sticker?

Mr. REGNERY. Senator, when I was working in the Lands Division, one of my children I think saw the bumper sticker advertised, and we ordered a couple of bumper stickers. One of them said, "Nuke the whales", which I put up in my office in the Lands Division and the other one said, "Have you slugged your kid today?" I think at that time, in fact, I had no idea I would wind up in the Office of Juvenile Justice and Delinquency Prevention. So, it seemed appropriate that if we were going to nuke the whales in the Lands Division we would slug our kids in the Juvenile Delinquency Office. So that is why it is on the car.

The CHAIRMAN. As I understand it, it was just in the spirit of jest?

Mr. REGNERY. I would say that is probably appropriate. I try to keep a sense of humor about things I do.

The CHAIRMAN. I see.

The distinguished Senator from Pennsylvania, Mr. Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Regnery, you refer to the programs that the President and the Attorney General are talking about regarding crime control in response to Chairman Thurmond's question whether you are supportive of a $70 million appropriation for the Office of Juvenile Justice and Delinquency Prevention. What programs are you referring to that the President and the Attorney General are pushing on crime control as it relates to the juvenile issue?

Mr. REGNERY. Particularly, the Attorney General's Task Force on Violent Crime has several recommendations in it on things that should be done involving the juvenile justice system. The President's Task Force on Victims includes another rather extensive list, in fact, of things which juvenile justice should look at and things which should be done.

Senator SPECTER. Could you specify some of those things that you refer to in generalization?

Mr. REGNERY. Yes. For example, the question of confidentiality of records is one that is raised, I believe, in both reports.

Senator SPECTER. And what is your sense on that?

Mr. REGNERY. That is a difficult issue. We are looking at it very hard. I do not know.

Senator SPECTER. Have you come to any conclusion?

Mr. REGNERY. No. We have looked at it. We have put together a group of staff people and I have talked to a lot of other people outside on what to do about the question. It is certainly a very burning issue among those in the juvenile justice system. What we are trying to do is to find out what needs to be done; what research needs to be done; to find out what we can do to provide information to State legislatures, particularly, and other juvenile justice experts on what the impact of the various confidentiality statutes are.

Senator SPECTER. Would you consider it appropriate for someone in your position to have a stand on the confidentiality issue?

Mr. REGNERY. Oh, yes.

Senator SPECTER. Do you intend to take a stand on it?

Mr. REGNERY. Yes, after I have gathered all the information that I need to take a position. I do not have that yet.

Senator SPECTER. What sort of information are you looking for?

Mr. REGNERY. Well, we have asked a number of people who are experts, including prosecutors and police and representatives of their organizations, judges, academics, and others what they believe, first of all, what we need to do and what impact the confidentiality question has on juvenile delinquents, specifically, and on crime generally.

Senator SPECTER. Mr. Regnery, we have been joined by Senator Warner.

STATEMENT OF HON. JOHN W. WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Mr. Chairman, I do not wish to interrupt. I am simply here to submit for the record a statement on Mr. Regnery's behalf. You are well underway with your questioning, and I suggest you keep going.

Senator SPECTER. We would be pleased to have your introductory remarks, Senator. We can continue how ever you choose to do it.

Senator WARNER. You are doing quite well. Just go right along and I will submit this.

Senator SPECTER. Thank you very much, Senator.

[The prepared statement of Senator Warner follows:]

PREPARED STATEMENT OF SENATOR JOHN W. WARNER

Mr. Chairman, I am pleased to appear before the Committee this afternoon to introduce Alfred S. Regnery.

As we know, President Reagan has nominated Mr. Regnery to be the Administrator of the Office of Juvenile Justice and Delinquency Prevention.

He has been Deputy Assistant Attorney General, Land and Natural Resources Division, Department of Justice since 1981 and served as Chief Minority Counsel, Administrative Practice and Procedure Subcommittee of this Committee, and as Chief Legislative counsel for Senator Laxalt from 1978 to 1981 and is well known to many of the members of this Committee.

Mr. Regnery is married and has four children. He is a graduate of Beloit College and received his law degree from the University of Wisconsin in 1971.

He has been in the private practice of law, served in legislative branch of government and in the executive branch. This experience should enable him to carry out the duties of his new position with distinction.

Mr. Chairman, it is a pleasure to introduce a fellow Virginian to the Committee, and I urge his confirmation.

Senator SPECTER. Mr. Regnery, a question has arisen as to your sense of execution of the Juvenile Justice and Delinquency Prevention Act, on the prevention aspect. Would you comment about your own approach to the enforcement of the Act, which as specified in quite a number of places, contains a congressional intention to emphasize crime prevention approaches for juveniles?

Mr. REGNERY. Yes. Crime prevention is mentioned many times. The Washington Post claimed that it was 93 the other day. I had not counted them. But it does not say what we are supposed to do in terms of prevention, and it does not define prevention.

I suppose if you wanted to, you could probably say that virtually everything we do bears on juvenile delinquency prevention. When you prosecute multiple offenders and put them in institutions keeping them from committing another delinquent act, I guess that is prevention on the one hand. And prevention also goes to the other end of the spectrum, which is teaching kindergarten children to obey the law. That is prevention too.

As I explained, in response to Senator Thurmond's question, prevention is something that goes on in a rather wide variety of ways in the Federal Government. As I mentioned, I think we have counted up some 35 or 36 different prevention programs that are run by HHS and Education, Labor, HUD, ACTION, NIDA, and other people. And it has been my sense, and, in fact, the statute demands that we do this, that we can inventory the other programs that are going on in the Government and we can use what influence we have with the other people who run those programs to try to coordinate them. We can try to keep those programs from overlapping; to measure and advance their effectiveness, and to do research to find out what works and what does not work, and to provide that information to the other agencies of Government much better than we can run our own prevention program. These things we are trying to do.

Senator SPECTER. Are you saying that OJJDP would not run its own prevention programs?

Mr. REGNERY. Well, yes and no. We did run a major prevention demonstration program between 1977 and 1980, and we have, of course, evaluated that. We have research that we did as a result of that, and that information is available to State and local governments and everybody else for their use in replicating those programs if they want to. And that information does go out from our office.

I do not think that it would be a wise use of taxpayers' money to try to do that again. We do not have the funds to do it. We have, I guess, at most, $8 or $10 million that we could put together if we abandon other things for prevention. And we cannot compete with the rest of the Government which is spending, as I say, nearly $2 billion on prevention. So I think by using the Coordinating Council, which was set up by statute, to try to bring the other people in the

Government together, to try to inventory the programs that exist and to assess them, we can spend our money much more effectively and actually have much more effective and efficient programs than we could by trying to run another program. The Government does not need more programs. There are enough. They need to work better.

Senator SPECTER. Well, are you saying that the current appropriation for OJJDP does not enable it to carry out any meaningful prevention programs?

Mr. REGNERY. I would not say any meaningful prevention program. I do not know that we could run our own demonstration program efficiently, no.

Senator SPECTER. Well, the problem that I have with your answers, Mr. Regnery, is that the Juvenile Justice and Delinquency Prevention Act of 1974, which is what you would be charged with administering in the Office of Juvenile Justice and Delinquency Prevention, specifies in unequivocal terms that a prime, perhaps the prime object of the statute and the agency is delinquency prevention. So the question to you really is what do you intend to do regarding prevention?

Mr. REGNERY. Let me list them. We are going to try to coordinate other programs in the Federal Government on crime prevention.

Senator SPECTER. How do you do that in a meaningful way? You do not have the authority to go to HHS and say, "Cut that program out" or "Expand that program"?

Mr. REGNERY. No, but we do have the authority to call together the principals from all the agencies which do have prevention programs. That authority is through our Coordinating Council, which was set up by statute. By statute, that Council must meet every quarter. I think there are about 12 or 15 different agencies, the secretaries or directors of each are members of that Council. They meet with us. We can, as I say, inventory the programs. I can meet with the principals in those departments one on one, which I am doing.

Senator SPECTER. Beyond coordination, what would you do?

Mr. REGNERY. We provide training to organizations that are advancing prevention and we are offering technical assistance.

Senator SPECTER. What do you mean by technical assistance?

Mr. REGNERY. Contracts with organizations, with companies or nonprofit organizations which provide any kind of assistance, basically, besides training. It includes things such as formation and management of effective programs. It is a broad spectrum of assistance.

Senator SPECTER. Do you believe that rehabilitation and treatment of juvenile offenders can be useful in cutting down juvenile crime?

Mr. REGNERY. I like to think it can be, yes. It has been a difficult area, certainly. It works with some people and with some people it does not.

Senator SPECTER. Do you have any specific ideas as to how you would do a better job on the rehabilitation aspect applied to juvenile offenders?

Mr. **Regnery**. I am looking for them. I do not think I have found them yet.

Senator **Specter**. You do not have anything specific that you want to carry out?

Mr. **Regnery**. Well, we are trying to put together a new corrections initiative. I was in Florida 3 or 4 weeks ago with a friend of yours, in fact, a fellow by the name of Judge Gladstone, with whom I think you went to law school.

Senator **Specter**. Yes.

Mr. **Regnery**. A very thoughtful man. He is the adviser to the Governor on crime. And he put together a juvenile correctional program in Florida which is out in the wilderness. He takes kids out there. They are serious offenders. They are aged, I guess, 13 to 18 or so. And he keeps them there for 3 or 4 months, and they work hard. He teaches them how to read and write, among other things, and that seems to be working. It is a new program. I am in close touch with the people there. It looks to me as though it may be the most promising program that exists. I have no hesitation, I guess, in saying that juvenile corrections is a pretty abysmal business. And I think there are a lot of changes that can be made. We are going to look hard to see what we can find.

Senator **Specter**. Mr. Regnery, on the subject of the objectives of the Juvenile Justice and Delinquency Prevention Act, there are two principal issues: One is the issue about removing juveniles from jails which house adults. I wonder if you agree with the statement which appears in the U.S. Department of Justice Bureau of Justice Statistics report entitled, "Jail Inmates 1982," and which says, "Despite persistent efforts to remove juveniles from adult facilities, the estimated number of juveniles in adult jails in June, 1982—(1,700)—was unchanged from that reported more than 4 years earlier?" That is their essential conclusion that there has not been significant progress on removing juveniles from adult jails.

Mr. **Regnery**. I believe that is correct. The 1,700 number is the one people always come up with. And, as I look at the figures, I guess that is about the same number that were in jail 4 years ago, and, therefore, I would have to agree.

Senator **Specter**. The second big problem is the problem of juveniles who are in detained status, who have committed no offenses. They call them status offenders, which is a misnomer, because they have done nothing at all. They may be runaways, or they may be neglected children. A General Accounting Office report, which was published just a few weeks ago, on March 22d, concluded that "GAO found that about 39 percent of its samples of juveniles detained in detention centers and jails in five States were not charged with a serious offense. They were accused of either nonserious offenses, acts that would not be considered offenses if they were adults, or no offenses at all." My question is: Do you think that is an accurate characterization of the problem in this country today regarding the detention of juveniles who are not charged with anything, or anything serious?

Mr. **Regnery**. That does continue to be a problem, yes. I have not had a chance to analyze closely the jail report yet. I have asked my staff to try to figure out why those five States, four of which are supposed to be in compliance, as far as our records are concerned, are not in compliance as far as the GAO is concerned. I asked them to do that last Friday and they have not come back with a response yet.

Senator SPECTER. I would be interested in your answer for the record. The concern that I have, Mr. Regnery, is that, based upon hearings which the Juvenile Justice Subcommittee held last year, we have found tremendous problems in the area of those two very basics, of putting a juvenile in detention where they have not committed any offense at all and, second, of mixing juveniles with adults. You can have a runaway, a teenage runaway, a runaway girl who has done absolutely nothing, and she finds herself locked up as if she were a criminal, but, worse than that, locked up with adults, which is just a breeding ground for crime. It's hardly any wonder that juvenile criminals become habitual adult offenders, leading to the tremendous crime problem. That is the reason that I have disagreed with the Attorney General and the Department of Justice when they have come forward and asked us to zero out OJJDP. I would like your observation as to how it can be argued that we ought to eliminate the Office of Juvenile Justice and Delinquency Prevention when these two fundamental problems continue to exist in such widespread numbers.

Mr. REGNERY. I guess everybody agrees that the problem is significantly reduced from 10 years ago, when our office was first opened. As I mentioned in response to Senator Thurmond, I think, as far as the deinstitutionalization question goes, there are 85 percent fewer nonoffenders in institutions than there were 10 years ago.

Senator SPECTER. On that statistic, I am told that that statistic may be erroneous in that it does not list people, juveniles who are detained for less than 24 hours. Do you know anything about that?

Mr. REGNERY. I do not know the answer to that.

Senator SPECTER. I would be interested if you would check on that.

Mr. REGNERY. I will be glad to.

Senator SPECTER. You might not have that included in the tally if they are not there until some point in the day. Pardon me for interrupting.

Mr. REGNERY. I guess, like anything else that the Federal Government does, the last percentage of things is much more difficult to do than the first percentage. I think of clean air, for example. I am sure you have heard you can eliminate 90 percent of the particles in smoke for the same amount of money you can eliminate the last 10 percent. I would guess there is something of the same phenomenon.

Senator SPECTER. That analogy cannot be apt as it applies to removing juveniles from adult institutions or from not institutionalizing juveniles. I can see it with the air, but it does not cost anything more to remove the 97th than it did the 7.

Mr. REGNERY. I do not know, that may be. There are 45 States in our program. I think 30 of those States have passed statutes which say that it is illegal to put a nonoffending juvenile in an institution.

There are five States, of course, that are not in the program at all. We have no control over those States. And, as long as the program continues, and the way it works now, we will not have any control over them. In the other noncomplying States, there are any number of varying degrees of problems that exist, and I guess it is pretty hard to generalize on it further than that.

Senator SPECTER. Mr. Regnery, are you familiar with Senate bills 520 and 522, which I have introduced?

Mr. REGNERY. Generally. I have not looked at them terribly closely.

Senator SPECTER. Well, the essence of it is that if we are to get the Federal Government out of the juvenile justice field, one way to do it might be to impose a requirement in the Federal law that States separate juveniles from adults. Would you favor that?

Mr. REGNERY. I would have to look at it more closely. I guess there are, certainly, a lot of questions that come to mind involving the constitutionality of it and federalism among other things. But it would get us out of the business of being in juvenile justice.

Senator SPECTER. The concern, really, is whether the Federal Government ought to tell the States what to do on this subject. Aside from the issues of constitutionality, do you think it would be wise, given the problems in the field, that we simply say this is a national policy which ought to be implemented, that States have this responsibility to separate juveniles from adults?

Mr. REGNERY. I guess without looking at the bills, I would really hate to answer the question. I cannot say.

Senator SPECTER. If you would take a look at it, I would appreciate it.

Mr. REGNERY. I will be glad to.

Senator SPECTER. The other aspect of it is, should the Federal Government say to the States, "You may not detain in a lock-up somebody who is a runaway or who is an abandoned child?"

Mr. REGNERY. Well, I generally agree that runaways and abandoned children should not be in institutions. Now, again, the same questions arise with the Federal Government telling the States what to do. Those are constitutional and federalism questions.

Senator SPECTER. I would be interested in your response on that as well.

Mr. Chairman, I have quite a number of questions for the record. The hour is very late, and I appreciate your indulgence.

The CHAIRMAN. Mr. Regnery, if you will answer those questions for the record, it will save time.

Mr. REGNERY. Yes, sir.

Senator SPECTER. Thank you very much, Mr. Regnery.

Mr. REGNERY. Thank you, Senator.

[Responses of Mr. Regnery to questions of Senator Specter appear in the question and answer section at page 124.]

The CHAIRMAN. Mr. Regnery, with regard to the point the Senator just made, separating young first offenders from hardened criminals, I think it would be a great service to the country and the people of the country if you could look into that and see if the law is adhered to. If the law is not adequate, if you will let us know, maybe we can amend it.

I was a State judge before I became a Governor and Senator. And my experience was that you put these young first offenders in prison with hardened criminals, it just makes criminals out of them.

Mr. REGNERY. That is generally true.

The CHAIRMAN. So, if you could look into that and let us know the situation. And if you find in the Federal prisons that if they are not conforming to the law, or if the law is inadequate, please let us know, because we feel that something should be done to separate these young offenders from the hardened criminals.

Mr. REGNERY. We will do that.

The CHAIRMAN. Thank you.

The distinguished Senator from Ohio, Mr. Metzenbaum.

Senator METZENBAUM. Mr. Regnery, I remember when you were a staff aide here, and you certainly acquitted yourself well. And I have heard your testimony today, and I heard you say that just about everything could be considered prevention. I heard you fail to respond to the chairman and give him an answer as to the use of prevention funds to apprehend criminals, and you gave a lengthy answer, but you did not answer him as to whether you had used prevention funds to apprehend juveniles.

You talked a little bit about your experience in handling a few cases in juvenile court as a lawyer. But I think you would agree that you made the point that maybe it is better that you not have any experience in that area.

You come here recommended by one of the most respected Members of the U.S. Senate, a friend of mine. But other than that fact, I do not know why you should be the head of the Office of Juvenile Justice and Delinquency Prevention rather than any one of maybe 215 million other Americans, except maybe they are not as old as you. But what is there about you that qualifies you to head up this department and give some of us who are concerned about its operation and its effectiveness confidence that you can and will do the job? I will get into some of the specifics of some of the things you have said. I do not make much of the point of your bumper sticker, but I think the fact that it is a big joke to you is not a big joke to me. And I do not think it is a big joke to people generally that you have a bumper sticker saying, "Have you slugged your kids today?"

Now, maybe that is funny to you, but that is not my sense of humor. You have got four beautiful young children sitting behind you——

[Applause.]

The CHAIRMAN. Let us have quiet. If we cannot have quiet, we will have you put out. This is no place to show any feeling on any matter. You are here to listen.

Proceed.

Senator METZENBAUM. And what concerns me is why. Why you? What is there about you that qualifies you to head up this department instead of Mr. Jones and Mr. Smith or Mr. Anybody? And I think that is the question. You have an affirmative obligation to prove and sell to the members of this committee and to the Senate. I think in all probability you will get confirmed because that is the way it is around here; people do not like to vote against somebody. But I, for myself, am pretty openminded about you, except that I cannot find anything on the positive side yet. You are not doing anything about prevention programs, and do not intend to, obviously. You have some very unusual concepts. And, tell me why I should vote for you, or why any Member of the Senate should vote for you.

Mr. **Regnery**. Well, first of all, Senator, I am a lawyer and I like to think that I have had fairly broad experience as a lawyer. I know how statutes work, and I think I can carry out the mandate of the statute that authorizes my office to exist. I have read that statute very carefully many times, and I will do everything I can to see that we do carry out the mandate of that statute.

Senator **Metzenbaum**. The statute mentions prevention 94 times and, yet, you are here saying to us that you do not really contemplate using any of the funds, as I understood your response to Senator Specter, for prevention except by calling other agencies together and technical assistance, but I did not hear any affirmative programs that you had in the area of prevention, except the broad kind of prevention. You said, "I suppose putting people in prison can be a kind of prevention." I do not think that is what the statute contemplated. But I do not mean to interrupt your answer, and you go right ahead, sir.

Mr. **Regnery**. Well, Senator, so far, since I have been in office, I have obligated 23 percent of my discretionary money for prevention purposes.

Senator **Metzenbaum**. How much is that amount?

Mr. **Regnery**. $4,669,000.

Senator **Metzenbaum**. Of a total budget of?

Mr. **Regnery**. The discretionary money——

Senator **Metzenbaum**. Your total budget?

Mr. **Regnery**. Our total budget is $70 million.

Senator **Metzenbaum**. $70 million.

Mr. **Regnery**. Right.

Senator **Metzenbaum**. We are not just talking about discretionary money.

Mr. **Regnery**. That is right.

Senator **Metzenbaum**. We are talking about the use of $70 million, of which you have allocated $4 million for prevention.

Mr. **Regnery**. Of that $70 million, $40 million goes automatically to the States. It goes to the States based on their populations. The States, by our count, are using about 20 to 25 percent of that money for prevention purposes.

Now, again, prevention can mean many different things to many different people. We have used a very narrow definition of prevention. Another person's definition of prevention might find that of the State money half of it was being used for prevention.

Of the discretionary money, which is about, probably, $17 million, so far $4.6 million has been obligated for prevention.

In research——

Senator **Metzenbaum**. Now, you have to talk about what you are really saying about prevention, because, according to your response to Senator Specter, you consider just about everything prevention. You said that incarcerating prisoners——

Mr. **Regnery**. I said you could probably consider it to be prevention, under the definitions of prevention which exist.

Senator **Metzenbaum**. What kinds of prevention programs are you using, or are you talking about?

Mr. **Regnery**. Well, let me give you one specific. There is one called law-related education, to which we have given, I think, a total of about $10 million over the years. We just put $1 million, more or less, into law-related education. It is a system where lawyers, judges, police, and others go into the schools and teach kids about the law. And it is viewed as a primary prevention program. We funded it at virtually the same amount we had funded it before. I reduced it somewhat and required that the American Bar Association and some other organizations of a similar nature raise some money privately in order, as a match, to get our funds. But, together with the match, they get virtually the same amount of money that we had given them before.

We have a training program——

Senator **Metzenbaum**. I do not want to lose you on the thrust of my question. What is there about you, not exactly what you have done in the couple months you have been in office, what is there about you that qualifies you for this job? That is really the thrust of my question. You are a lawyer you said. What else?

Mr. **Regnery**. Well, I am a fairly good administrator, and I think that is important.

Senator **Metzenbaum**. What have you administered before?

Mr. **Regnery**. I was second in control of the Land and Natural Resources Division at the Justice Department for nearly 2 years. Before that, I had various responsibilities in my law firm as an administrator.

Senator **Metzenbaum**. How many people were employed in your law firm?

Mr. **Regnery**. About 15.

Senator **Metzenbaum**. Were you the head of it?

Mr. **Regnery**. No.

Senator **Metzenbaum**. Did you administer it?

Mr. **Regnery**. I did not administer all of it. I helped with the administration of parts of it, Senator.

Senator **Metzenbaum**. And now you are administering how many employees?

Mr. **Regnery**. Seventy.

Senator **Metzenbaum**. So that really is not comparable?

Mr. **Regnery**. It is about half of what we had at the Lands Division, less than half.

I think that I have certainly a very open mind about issues. I think that I have studied criminal justice issues very carefully. I have been involved in a lot of different criminal justice matters during my professional career. And juvenile crime and adult crime are certainly very closely allied, and many of the issues are the same.

Senator **Metzenbaum**. What have you done with respect to juvenile justice matters so far as studying issues, specifically as it pertains to juveniles? There may be a relationship in that they are both crimes, but the treatment of the juvenile is a different matter in the minds of many people.

Mr. **Regnery**. I have done considerable reading and other study on the juvenile court system.

Senator **Metzenbaum**. Tell us some of the works that you have read concerning juvenile justice.

Mr. REGNERY. I guess I cannot give you a list of them off the top of my head.

Senator METZENBAUM. Can you give us any? Can you tell us one book that you have read concerning the administration of juvenile justice, the matter of treating juveniles?

Mr. REGNERY. Well, they are in my office. I cannot think of the titles and the authors, but they are either in my office or my home. I have read quite a number.

I have studied the issue of juvenile courts. I have studied the issue of juvenile corrections. The other issues——

Senator METZENBAUM. How did you study the issue of juvenile courts?

Mr. REGNERY. Reading.

Senator METZENBAUM. What did you do? Have you gone out to a lot of juvenile courts to study them?

Mr. REGNERY. No, I have done a lot of reading. I have talked to a lot of people.

Senator METZENBAUM. What did you read?

Mr. REGNERY. Various books and articles.

Senator METZENBAUM. What books?

Mr. REGNERY. I will have to give them to you. I cannot remember all the titles of the books I have read, Senator.

Senator METZENBAUM. Well, you recognize, Mr. Regnery, that I have asked—you have told me how much you studied in two areas now. And I have asked you, and you said you studied them. I asked you how you have studied them, what book you read, what authority on this subject have you studied, and you have not been able to respond to either.

Mr. REGNERY. Well, let me see; recently I have re-read a book by James Q. Wilson, called, "Thinking About Crime," which is probably half on juvenile justice, and the other half is on adult crime. I recently read a book by a man named Charles Murray on juvenile crime. I am sorry, they do not come to mind, but there is quite a list of them.

Senator METZENBAUM. Have you visited a lot of juvenile courts?

Mr. REGNERY. Yes; I have been in a good many juvenile courts.

Senator METZENBAUM. As a lawyer, or how?

Mr. REGNERY. As a lawyer and, certainly, in the 4 months I have been in this office, I have been in a number of juvenile courts. I have spent a lot of time with juvenile judges, juvenile parole officers; juvenile police officers, and other people who are in the juvenile justice field. I will confess that much of this has been since I have been Acting Administrator of JJDP.

Senator METZENBAUM. Would you call that on-the-job training?

Mr. REGNERY. Yes.

Senator METZENBAUM. I am talking about what you have done before that.

Mr. REGNERY. Senator, I told you I have not done a great deal of work in the juvenile justice field before; that I have been involved in criminal issues and here in the Senate on a lot of issues that involve these things, but I have not directly been involved in juvenile justice issues.

Senator METZENBAUM. Mr. Regnery, is it a fact that you are contemplating spending $9 million to participate in a computerized program among police forces to identify children's bodies and find parents and murderers of young people in different jurisdictions?

Mr. **Regnery**. We have a request that we fund such an operation. We are looking at it to try to determine whether or not we can legally. We have been investigating it from the standpoint of the nature of the problem to find out whether or not it is the sort of thing that we should fund. We have done nothing about funding it so far.

Mr. **Metzenbaum**. You have done nothing about it?

Mr. **Regnery**. No.

Senator **Metzenbaum**. And how about you shifted $2 million to a program stressing tougher penalties for violent offenders, particularly youth, in big cities? Tell us about that program and what you did. Is that the fact?

Mr. **Regnery**. Well, that is not quite right. I think what you are probably talking about is a program that we are attempting to put together to deal with chronic youthful offenders. Those are juveniles who have committed a number of serious, violent or nonviolent crimes, which would be a program in prosecutors' offices to help them in prosecuting those offenders. We have not funded anything yet. We are trying to put it together. I have discussed it with a good many people, including academics and practitioners, to determine whether or not it would be feasible to do it and what the value of it would be.

Senator **Metzenbaum**. What do you consider the primary goal of the Office of Juvenile Justice and Delinquency Prevention?

Mr. **Regnery**. I am not sure there is any one primary goal. The statute has 9 or 10 primary purposes for which Congress established it. I do not know whether there is one that is more important than the others.

Senator **Metzenbaum**. Were you the one who said, "The primary goals of the Office of Juvenile Justice and Delinquency Prevention will be to protect society from crime and apprehend and punish criminals?" Did you make that statement?

Mr. **Regnery**. I may have. It sounds familiar, yes.

Senator **Metzenbaum**. That sounds like you thought that was the primary goal at that time when you made the speech to the National Advisory Committee on OJJDP, on January 17, 1983. Now you are saying you are not sure there is a primary goal?

Mr. **Regnery**. Well, that is certainly one of them. The statute, Senator, was amended substantially in 1980, and stressing working with the system on violent and serious offenders was, certainly, one of the primary elements of the 1980 amendments.

Senator **Metzenbaum**. Would you be good enough to tell me where in the statute, where in the act that these purposes are mentioned? I have the act before me, if you do not have it.

Mr. **Regnery**. I have got one. Well, the congressional findings, of course, are at the beginning of the act.

Senator **Metzenbaum**. Would you read to me that which you feel says that which you just stated, that the primary goals of OJJDP will be to protect society from crime and apprehend and punish criminals?

Mr. **Regnery**. I think it says something about protecting society, as I recall, in the congressional findings. And I guess I deduced——

Senator **Metzenbaum**. Where is that? I have the congressional finding.

Mr. **Regnery**. Well, in section 8, it says:

> The Juvenile Justice System should give additional attention to the problem of juveniles who commit serious crimes, with particular attention given the areas of sentencing, providing resources necessary for informed dispositions, and rehabilitation.

Senator **Metzenbaum**. Is that not a long ways, as a lawyer, would you not say that that is about as far from here to San Francisco to say that that language, which says that the Juvenile Justice System should give additional attention to the problem of juveniles who commit serious crimes, with particular attention given to the areas of sentencing, providing resources necessary for informed dispositions and rehabilitation, and transfer that over to the point of your saying that the primary goals will be to protect society from crime and apprehend and punish criminals?

Mr. **Regnery**. Well, it certainly does not——

Senator **Metzenbaum**. Can you make those two fit together?

Mr. **Regnery**. No; not those two exclusively, but if I could spend some time going through the statute, I can certainly pick out a number of other things that are mentioned in here that I think probably justify that; yes.

Senator **Metzenbaum**. Tell me one. I have looked through it. I have read it. You are the one who has the responsibility of administering it, and I say to you that nowhere in this statute does it indicate anything such as you have suggested, and you made it up; that it just is nonexistent, anything about protecting society from crime and apprehending and punishing criminals. If you can show that to me then I will apologize to you and I stand corrected. But I do not see that in the statute.

[Pause.]

Let us go on.

Mr. **Regnery**. It will take me awhile. I do not remember it. I do not have the statute particularly well—outlined in front of me, Senator.

[Subsequent to the hearing Mr. Regnery supplied the following information:]

> This is in response to your request that I provide a written response to your question regarding the consistency of my goals for OJJDP with the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.
>
> On January 17, 1983, I presented my Fiscal Year 1983 priorities and operating principles to the National Advisory Committee for Juvenile Justice and Delinquency Prevention (NAC). I began that speech with the following general statement of purpose and goals: "The Office of Juvenile Justice and Delinquency Prevention (OJJDP) must become an effective part of the Department of Justice in guiding and supporting its efforts to reduce crime and create a more secure society. As such, the primary goals of OJJDP will be to protect society from crime, apprehend and punish criminals, and seek ways to turn young people away from crime as a way of life. OJJDP will act as a liaison between the juvenile justice system and the criminal justice system, and will strive to bring the two more closely together."
>
> I then went on to state that to achieve these goals ". . . the primary focus of OJJDP's discretionary grant program should be on the chronic, violent and non-violent juvenile offender." This focus will necessarily require that the discretionary grant program concern itself with youth who have come into contact with the law enforcement and criminal justice system (which under Section 103(b) of the Juvenile Justice Act includes juvenile delinquency prevention, control or reduction programs) and also consider the victims of juvenile crime.

OJJDP has ample authority to focus its scarce discretionary grant resources on the development and implementation of program models which seek to assist the professionals in the justice system—police, prosecutors, judges, and corrections officials—in dealing with the serious and violent juvenile offender. The 1980 Amendments to the Act established this area as a congressionally recognized priority:

"Sec. 101(a). The Congress hereby finds that—

(1) juveniles account for almost half the arrests for serious crimes in the United States today;

* * * * * * *

(6) States and local communities which experience directly the devastating failures of the juvenile justice system do not presently have sufficient technical expertise or adequate resources to deal comprehensively with the problems of juvenile delinquency;

(7) existing Federal programs have not provided the direction, coordination, resources, and leadership required to meet the crisis of delinquency; and

(8) the juvenile justice system should give additional attention to the problem of juveniles who commit serious crimes, with particular attention given to the areas of sentencing, providing resources necessary for informed dispositions, and rehabilitation."

It is my intent to fund those programs which have the potential to effectively combat serious juvenile crime and which, when viewed as a system-wide response to these problems, will serve these important congressional priorities.

Further, the Juvenile Justice Act's stated purposes are served by programs which seek to both reduce juvenile crime and provide technical assistance transfer of knowledge of effective means of controlling juvenile crime:

"Sec. 102(a) It is the purpose of this Act—

* * * * * * *

(2) to provide technical assistance to public and private agencies, institutions, and individuals in developing and implementing juvenile delinquency programs;

* * * * * * *

(b) It is therefore the further declared policy of Congress to provide the necessary resources, leadership, and coordination (1) to develop and implement effective methods of preventing and reducing juvenile delinqency . . ."

The OJJDP Administrator has substantive program authority to pursue the goals outlined in my statement to the NAC. Section 224(a)(1) provides as follows:

"Sec. 224(a). The Administrator is authorized to make grants to and enter into contracts with public and private agencies, organizations, institutions, or individuals to—

(1) develop and implement new approaches, techniques, and methods with repect to juvenile delinquency programs; and

* * * * * * *

(12) develop and implement special emphasis prevention and treatment programs relating to juveniles who commit serious crimes."

The term "juvenile delinquency program," used in Section 224(a)(1), is defined at Section 103(3) as follows:

"(3) the term 'juvenile delinquency program' means any program or activity related to juvenile delinquency prevention, control, diversion, treatment, rehabilitation, planning, education, training, and research, including drug and alcohol abuse programs; the improvement of the juvenile justice system; and any program of activity for neglected, abandoned, or dependent youth and other youth to help prevent delinquency;"

This definition includes any program or activity related to juvenile delinquency "control," a major way in which I will seek to reduce serious and violent juvenile crime. Further, the express authority to fund programs relating to juveniles who commit serious crimes as an authority recognized and added by the 1980 Amendments to the Act.

It should be understood that I intend to implement OJJDP's goals and priorities in a manner that is fully consistent with the Juvenile Justice Act. I believe that the control and reduction of youth crime and delinquency through vigorous assistance to criminal and juvenile justice system professionals is consistent with both the role of the Department of Justice and the mandates of the Juvenile Justice Act.

Senator METZENBAUM. You have also said that you "suggest that the concept of confidentiality for juvenile offenders and their records may have run its course."

I understood you to respond to Senator Specter that you were just considering the question of confidentiality. This indicates that you have already made up your mind.

Mr. REGNERY. I said it may have run its course, and I think that is probably accurate, Senator. I have not concluded that it has. As I have studied the issue, and as I have discussed it with people in the criminal justice system, I find that there is probably more dissatisfaction with the concept of confidentiality of juvenile records than any other single thing in the juvenile justice system. I think that comes from people—I believe there is a quote in a speech from Senator Kennedy, where he said that he thought the question of confidentiality was one that needed to be changed; to people like Marvin Wolfgang, Professor Guggenheim, at NYU Law School, and many, many other people, from police officers to judges, and so on and so forth, that confidentiality is the major problem, or, certainly, one of the major problems in the juvenile justice system.

As I look at confidentiality I find few people who defend the system as it still exists in some States that do offer total confidentiality or near total confidentiality to juveniles. Based on that, as I have studied it, I find that there is almost universal dissatisfaction with that system.

Senator METZENBAUM. Mr. Regnery, let us assume for the matter that you, as a parent, or anyone else as a parent, and a child pilfers something from another child, $1, a box of crayons, a cap, and somebody sees fit to bring that matter to the attention of the juvenile authorities. If it were your child, would you want that child's record to be stigmatized throughout its entire lifetime for having been charged with that which probably amounted to petty larceny under the criminal code, and I do not know what they would call it before the juvenile court, but would indicate that the child had taken something unlawfully from another child, and that child was 8 or 9 or 10 or 11 or 12. Now, it is your child, how would you feel about the confidentiality aspects of that?

Mr. REGNERY. Well, I do not know. I am not sure, first of all, that in the hypothetical you set forth whether the child would be stigmatized. After all, I think most children probably have done something like that in their lifetimes. As I look back on my childhood and I remember what I did and my friends did, I think we all probably came pretty close to taking something from somebody else if we did not do it. And I think most people as they look back, say an employer, if they look at somebody they are going to hire and look back and see that they have pilfered something when they were 8 years old, I do not think there are too many people that would be too concerned about it.

There are, of course, shades of strong degrees of difference of confidentiality, and I do not think that what I am talking about really involves children taking boxes of crayons from other children. What I am talking about are felonies. I think it is important to remember that children commit about 40 percent of the felonies in the United States. And I think that as the criminal justice system gets those people as they come out of the juvenile justice system, in order to protect society against crime, from what I hear from the experts, it is almost universally necessary to have those records before the court, both the police records, the social records and the juvenile court records, or at least it may be, in order for the courts to make an intelligent disposition of what to do with that offender.

Senator METZENBAUM. You did not say anything in your statement about it being only felonies, did you?

Mr. REGNERY. No, I guess I probably did not. That is generally what we are talking about.

Of course, again, it would depend if it were a court record or a police record which where simply because of the process of working things out on the prosecutorial level, you may have a felony that was reduced to a status offense, and so on.

Senator METZENBAUM. Mr. Regnery, once you break down the cloak of confidentiality, who makes the determination as to what is confidential and what is not? You were a lawyer. You break down the confidential relationship between a client and a lawyer, between the doctor and the patient, between the priest and the parishioner, once you break it down and then you have to decide whether this matter is confidential or if another matter is not, have you not really opened the door very wide to some real problems for treatment of children, the rehabilitating of children?

Mr. REGNERY. No, I do not think so, because what you are talking about is privilege, which is a doctrine of evidence.

Senator METZENBAUM. I understand it is a difference of privilege, but I am talking about the impact. I am talking about the impact of breaking down the confidentiality that children are now afforded.

Mr. REGNERY. Well, many States have done that, and have removed the restriction against the use of juvenile records in adult courts. For the most part, those are rather recent changes in the statutes, and I do not know that we know well enough yet what the impact has been. I guess I do not quite understand the thrust of your question on confidentiality.

Senator METZENBAUM. The thrust of my question is that once you start to break down the confidentiality, as you would suggest, as pertains to juveniles, then I do not understand where you draw the line between that which is confidential and that which is not, and who makes that determination.

Mr. REGNERY. Well, somewhere along the line we did draw an arbitrary line of an 18th birthday. We decided that if people commit a crime after their 18th birthday, the matter will not be confidential and if they do before their 18th birthday, it will be confidential. So we have drawn the line. Now, I guess we have to——

Senator METZENBAUM. Now, what would you do, lower the age? Is that what you are saying?

Mr. REGNERY. That is what some States are doing. Other States are changing the confidentiality restrictions depending on the crime that was committed. There are certainly various ways of doing it, but the demarcation already exists.

Senator METZENBAUM. Well, there is nothing in your statement to the Annual Conference on Juvenile Delinquency, on February 23, 1983, that indicated that you were talking about changing the age. You suggest that the concept of confidentiality for juvenile offenders and their records may have run its course. That is all juveniles from what that says, and you are a lawyer.

Mr. REGNERY. I said "may have," that is right.

Senator METZENBAUM. It is reasonable to expect that which you say is that which you mean.

Mr. REGNERY. I said it may have run its course. That is what I mean.

Senator METZENBAUM. That is right, but now you are saying that maybe it ought to be something less than 18. That is not what you said in the public statement.

Mr. REGNERY. I am saying maybe. I do not know exactly, Senator. That is what we are trying to find out by doing what we are doing on the question of juvenile records.

Senator METZENBAUM. What is your attitude with respect to rehabilitation?

Mr. REGNERY. I think that rehabilitation is certainly something that is necessary, particularly with children who are incarcerated. We have run many different rehabilitation programs. So did LEAA when it was in business. There are all different types of rehabilitative programs that exist in institutions across the country. Some of them work and some of them do not. I do not think we can ever stop trying to rehabilitate people, but I think, at the same time, there are some people whom we have to recognize probably cannot be rehabilitated and, also, there are probably instances where we are trying to rehabilitate people who, in the first instance, may not need to be rehabilitated. Also, of course, I guess it is important to remember that one kind of rehabilitation may work for one person and not work for somebody else.

Senator METZENBAUM. But in your public speech you said "the theory of almost complete reliance upon rehabilitation is under severe attack and has lost whatever glamor the public ever found it to have." That would indicate that you do not think very much of——

Mr. REGNERY. That is what I read as to what the public seems to think. And, as I look at polls that are taken about crime; as I read various things in the media about the attitudes of the public, I think that accurately reflects what I read.

Senator METZENBAUM. Do you believe that there is an obligation on your part to increase the capacity in State and local governments and public and private agencies to conduct rehabilitation programs?

Mr. REGNERY. Yes.

Senator METZENBAUM. I understand that you have denied continued funding to the National Juvenile Law Centers, and the centers are in the middle of litigation dealing with crucial issues of State compliance with the act. Now, Senator Danforth has written you, in which he said:

> It is my understanding that the Youth Legal Assistance Project litigation which the NJLC is pursuing was specifically spelled out by the Office of Juvenile Justice and Delinquency Prevention in accordance with provisions of the 1974 Act. The lawyers involved in these cases are ethically bound to continue them. Without continuation funding this litigation will likely terminate, thus, abrogating the governments responsibility.

He went on to say:

> The lack of federal funds will seriously curtail their availability and will adversely affect delinquency prevention programs.

In that same connection, a member of the Commission, a member of the Circuit Court of Appeals at St. Louis, said:

> The failure to continue funding of the National Juvenile Law Center will result in an enormous ethical and moral bind for the lawyers of the National Juvenile Law Center. They will be faced with the ethical obligation to complete these complex cases without funds for the cost of litigation or for their own salaries. Moreover, if funds are not made available, irreparable and immediate harm will likely come to the juveniles represented by National Juvenile Law Center in these important, precedent setting cases. Inter alia, cases will not be prosecuted vigorously; planning and strategy will depend on the cost; delay and indecision will prevail; and eventually the possibility of dismissal lurks in the background. In all cases the clients will not obtain the justice promised them.

With respect to that letter from a Member of the Senate, your party, and a Federal circuit court of appeals judge, a very distinguished one, from St. Louis, Mo., how do you justify, and how do you explain this ethical and moral bind that you put the lawyers who are prosecuting or handling those cases in by reason of your precipitous action?

Mr. REGNERY. Senator, that matter is presently in litigation, and the issue that you asked me about is the one that is being litigated. Therefore, I do not think I should comment on the record as I do not believe it would be fair to either side.

Senator METZENBAUM. I am not asking you to comment on the litigative issue; I am asking you to comment upon your responsibility for having terminated the funding for the matter of handling those cases and leaving the lawyers high and dry. I am not asking you to comment——

Mr. REGNERY. Senator, that is precisely the area, the issue that is being litigated between the Department of Justice and the National Juvenile Law Center. It brought litigation against us for not continuing its funding, and the issue that you asked me about is the issue raised in litigation.

I sent a letter to the plaintiff's attorney in that case 3 or 4 days ago which sets forth my position, which letter I would be happy to make available to the committee, that does set forth the position on the record.

Senator METZENBAUM. Tell us what your position is.

Mr. REGNERY. I would rather give you the letter, since it is in litigation and since it is a sensitive matter, I cannot remember exactly what the wording was in the letter. It is about a three or four page, lengthy, legal letter, and I think it would be better if I put it in on the record.

Senator METZENBAUM. Mr. Chairman, I will offer the letter for the record as well as a copy of the letter from Judge McMillian, and from Senator Danforth.

The CHAIRMAN. Senator, do you want those in the files or in the record?

Senator METZENBAUM. I want them in the record, please.

The CHAIRMAN. Without objection, they will be placed in the record.

[The letters referred to follow:]

U.S. Department of Justice,
Office of Juvenile Justice and Delinquency Prevention,
Washington, D.C., March 31, 1983.

Karr & Lyons,
Washington Building, 15th Street and New York Avenue NW., Washington, D.C.

Dear Ms. Lyons and Mr. Karr: This is in response to your requests of March 29, 1983 for an expedited administrative hearing on the denial of the National Juvenile Law Center's request for continuation funding; for interim funding pending the administrative hearing review process; and for reconsideration of the denial of continuation funding.

As you know, the National Juvenile Law Center received a 24 month grant from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) on November 5, 1980. The grant was in the total amount of $997,071, for the period October 1, 1980 through September 30, 1982, and specifically provided that the office made no commitment to continue the project beyond that period. Based on the grantee's request of April 28, 1982, a "Grant Adjustment Notice" was approved in August of 1982 to extend the grant expiration date to March 31, 1983. The purpose of this extension was to allow the Center to exhaust the remainder of the grant funds and to complete its activities under the grant in an orderly manner. No additional funds were allocated under the six month extension and, as explicitly noted in the grant extension, OJJDP unequivocally stated that it had no intention to continue funding of the project beyond the extended termination date of March 31, 1983.

Accordingly, the Center has been on notice from the date of award that it would receive a limited period of support from OJJDP for its advocacy activities. Given the express limitations on the amount of Federal financial support, it was incumbent upon the Center not to commence litigation activities which it could not support beyond grant time frames and resources, to arrange for alternative funding for such activities upon termination of the Federal support or, failing that, to give notice to its clients and arrange for the substitution of other counsel to handle pending matters. I presume that this was done. In any event, it is not the responsibility of OJJDP to provide interim funding for legal representation of NJLC clients to prevent harm which might arise out of NJLC's failure to carry out its obligations or to timely pursue its administrative remedies.

With respect to your request for continuation funding, my letter of March 9, 1983 was not the first indication that NJLC would not receive a new grant award. The original project termination date was September 30, 1982. OJJDP's Fiscal Year 1982 funding policy did not include NJLC as eligible for continuation (i.e., a new grant award) under the discretionary grant program. When (then) Acting Administrator Charles Lauer granted the six month extension of the Center's grant to March 31 in order to permit extra time to the grantee to complete its grant activities in an orderly manner, he expressly provided that OJJDP did not intend to provide any additional funding beyond this new Fiscal Year 1983 termination date. Mr. Swanger expressly recognized this when he stated in his January 17, 1983 letter that ". . . we were advised by your predecessor that no funds were forthcoming to continue or complete the work of YLAP."

My agreement, shortly after my appointment as Acting Administrator, to review the Center's program was given without any assurance to Mr. Swanger that new funding under OJJDP's Fiscal Year 1983 Program Plan would be provided. After reviewing the proposal to determine whether the office would consider it for possible Fiscal Year 1983 funding, I found that the project activities proposed in the application would not be within the Fiscal Year 1983 funding priorities that I was in the process of formulating for OJJDP. Even if Mr. Swanger's request for funding could be construed to request a new grant only for those litigation activities which allegedly would result in "irreparable injury" to his clients, and which OJJDP deemed to be important to achieve Juvenile Justice Act objectives, Mr. Swanger has not set forth sufficient information on which such a determination could be made. Consequently, your request for reconsideration of my March 9, 1983 decision is denied.

In order to accommodate your client's interests in this matter, I have referred your appeal letter to the Office of General Counsel, Office of Justice Assistance, Research, and Statistics (OJARS), and requested that your request for an expedited administrative hearing be granted. That office informs me that a hearing on the record would require a minimum of 60-90 days with the full cooperation of all parties. Because we did not receive your hearing request until the late afternoon of March 29, we have not yet reached a decision on your request for the appointment of an Administrative Law Judge.

For further information, please contact John J. Wilson, Attorney-Advisor, Office of General Counsel, at 724-7792.

Sincerely,

ALFRED S. REGNERY,
Acting Administrator.

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C., March 24, 1983.

Mr. ALFRED REGNERY,
Acting Administrator, Office of Juvenile Justice, and Delinquency Prevention, Indiana Avenue NW., Washington, D.C.

DEAR MR. REGNERY: It has come to my attention that the application for continuation funding of the National Juvenile Law Centers (NJLC) Youth Legal Assistance Project (YLAP) has been denied. I am concerned about the negative effect of this decision to deny funds on the litigation which the NJLC is currently pursuing and about the void which this defunding leaves in education and technical assistance for professional and others interested in juvenile justice and delinquency prevention.

It is my understanding that the Youth Legal Assistance Project litigation which the NJLC is pursuing was specifically spelled out by the Office of Juvenile Justice and Delinquency Prevention in accordance with provisions of the 1974 Act. The lawyers involved in these cases are ethically bound to continue them. Without continuation funding this litigation will likely terminate, thus, abrogating the government's responsibility. Further, the focus of the litigation, reducing the incidence of jailing and inappropriate institutionalization of juveniles, has been shown in studies by the Office of Juvenile Justice to have a significant impact on recidivisim among chronic violent and non-violent juvenile offenders.

The educational and technical assistance services which the NJLC provides are not available through other agencies. These services are vital to lawyers, judges and advocates in juvenile justice. The lack of federal funds will seriously curtail their availability and will adversely affect delinquency prevention programs.

I urge you to reconsider your decision denying funding to the National Juvenile Law Center's Youth Legal Assistance Project. I look forward to your response.

Sincerely,

JOHN C. DANFORTH.

U.S. COURT OF APPEALS, EIGHTH CIRCUIT,
St. Louis, Mo., February 22, 1983.

ALFRED REGNERY,
Acting Administrator, Office of Juvenile Justice, and Delinquency Prevention, Indiana Avenue NW., Washington, D.C.

DEAR MR. REGNERY: As a member of the Board of Directors of the National Juvenile Law Center, I must voice my extreme concern with the urgency of continuing the grant activities of the National Juvenile Law Center's Youth Legal Assistance Project, which is funded under an Office of Juvenile Justice and Delinquency Prevention grant.

As I understand it, under the Youth Legal Assistance Project grant, specific class action impact litigation has been funded by the OJJDP to implement the Juvenile Justice and Delinquency Prevention Act in various states. Some of these cases have been funded for over four years and under two grants from the OJJDP. Many of these cases are still pending with important constitutional and Juvenile Justice and Delinquency Prevention Act issues at stake.

The failure to continue funding of the National Juvenile Law Center will result in an enormous ethical and moral bind for the lawyers of the National Juvenile Law Center. They will be faced with the ethical obligation to complete these complex cases without funds for the costs of litigation or for their own salaries. Moreover, if funds are not made available, irreparable and immediate will likely occur to the juveniles represented by National Juvenile Law Center in these important, precedent setting cases. Inter alia, cases will not be prosecuted vigorously; planning and strategy will depend on the cost; delay and indecision will prevail; and eventually the possiblity of dismissal lurks in the background. In all cases the clients will not obtain the justice promised them. The results are lengthy, unwarranted jailing and incarceration of children under improper conditions and secure incarceration of non-offenders in contravention of the Juvenile Justice and Delinquency Prevention Act.

I urge you to take immediate action to continue funding the National Juvenile Law Center so that this irreparable harm will not occur.

Sincerely,

THEODORE MCMILLIAN,
Circuit Judge.

Senator METZENBAUM. I have no further questions, Mr. Chairman.

The CHAIRMAN. We will leave the record open on these two nominees if any other Member of the Senate wishes to prepare questions.

Senator METZENBAUM. Senator Biden has some questions, not orally, but just to have him respond to.

The CHAIRMAN. Mr. Regnery, Senator Biden, the ranking Member, has some questions here. He could not be here at the hearing, I presume.

Senator METZENBAUM. That is correct.

The CHAIRMAN. He desires for you to answer these questions, if you will answer them for the record.

Mr. REGNERY. I will do that, Senator.

The CHAIRMAN. Mr. Regnery, is there anything else you want to say before we adjourn your hearing? Senator Mathias I think will be here in a few minutes, if you can wait a few minutes. Is there anything else you want to say?

Mr. REGNERY. Nothing else, thank you.

The CHAIRMAN. I just want to say that I have known Mr. Regnery for a number of years, when he worked here with Senator Laxalt, and I found him a very dedicated, able, patriotic, fine member of the staff of this committee.

Mr. Regnery, this is a very important assignment to which you have been appointed. And, as a father of four children, I am very much interested in protecting our children, I hope you will look carefully into this question that was raised by Senator Specter about segregating the first offenders from the hardened criminals. I think that is very important. The chief responsibility for crime that occurs in the State is the States. That is not the chief responsibility of the Federal Government. But we have a leadership role here in which we can play a vital part, I think, in this matter. And I hope you will study every aspect of it and every facet and all that you can render the greatest service to the people of this Nation.

I think there is an opportunity here to do some very fine work which will be of benefit to the young people of this country.

I believe you mentioned, was it 40 percent of the children who commit the felonies?

Mr. REGNERY. That is right.

The CHAIRMAN. What is that?

Mr. REGNERY. That is right, 40 percent of the crimes.

The CHAIRMAN. Forty percent of the felonies are committed by children, I believe you said.

Mr. REGNERY. By juveniles, that is right.

The CHAIRMAN. By juveniles. What do you consider a juvenile?

Mr. REGNERY. Those are people under 18, Senator.

The CHAIRMAN. Under 18.

Mr. **Regnery**. If you include those between 18 and 20, it is closer to 60 percent of the felonies in the United States.

The **Chairman**. There was some question raised here about confidentiality, publishing the names—striking names from the record if they are under a certain age. What age do you feel, if you will, for the record, to be annihilated or what age do you feel it should be a permanent record on a person?

Mr. **Regnery**. I am not sure that you can say. There are different States that handle it different ways. Some States have abandoned the whole confidentiality question almost entirely. Other States, New York, for example, have recently passed statutes which cut off the jurisdiction of juvenile court and its concomitant services at 16. South Carolina, I think, has 17, if I am not mistaken. And other States have 18. So it varies considerably and without, taking a pretty careful look, I am not sure I could say what the right age is.

The **Chairman**. Seventeen, I believe, is the age in our State they are tried as adults. There would be a difference in whether they committed a misdemeanor or felony too. That might go determining whether it is a child or the character of the child, would it not?

Mr. **Regnery**. That is right, yes.

The **Chairman**. And there is a difference in ages. For instance, under 6 in my State, a child is not capable of committing a crime. And from 6 to 14, they are presumed not. But over 14, they are held responsible.

I am just thinking certain ages and, of course, that varies in different States. I do not believe we have a specified age at the Federal level, do we?

Mr. **Regnery**. I think it is 18, but I am not sure of that, Senator.

The **Chairman**. Eighteen for what?

Mr. **Regnery**. That the jurisdiction of the juvenile court ends. I am not really sure what the Federal statute is.

The **Chairman**. In other words, there is a difference in a child 16, for instance, committing a theft and one 6 or 16, or a difference in a child of 6 maybe committing a felony and one 16. In other words, when they get older they ought to be held more responsible.

Mr. **Regnery**. I am not sure you can come up with any age where people suddenly change. I think, obviously, it is an arbitrary line. We have tried to draw an arbitrary line where we thought, at least in 1900 or when the statutes were first enacted, that that was the place where it should be. I think we need to look pretty hard at that to find out whether or not it is correct.

The **Chairman**. We are very interested though in trying to help these young people, and I think most of them can be reformed. Those who run away from home or those who commit crimes the first time, I feel, with the proper guidance and proper environment, they can be reformed. So many parents now are away from home, and there are so many broken homes, and the children get discouraged. But, with the proper parental control and proper guidance by proper people, I feel that a great deal can be done to save these young people.

Of course, the Federal role, as I say, is the one you have to determine, because it is not just the Federal role alone. The most important role is the home. Next is the school. The next ought to be the church, and then next is the public. But, at any rate, you have a very important position and I wish you well in it, and feel sure that you will do a fine job.

Mr. REGNERY. Thank you very much, Senator.

The CHAIRMAN. We will now excuse you. I understand that Senator Mathias cannot come back this afternoon. He will submit some questions, Dr. Schlesinger, if you will answer those for the record.

If there is nothing else now, we will stand adjourned.

[Whereupon, at 6:20 p.m. the hearing was adjourned.]

BIOGRAPHIES

STEVEN ROGER SCHLESINGER

NOMINEE, DIRECTOR, BUREAU OF JUSTICE STATISTICS, DEPARTEMENT OF JUSTICE

Born: March 28, 1944, New York, N.Y.

Legal residence: Silver Spring, Md.

Marital Status: Married to Madeline Florence Nesse.

Education: Institute for European Studies, 1962-63; BA, Cornell University, 1968; MA, Claremont Graduate School, 1969; Ph. D., Claremont Graduate School, 1973.

Military: None.

Experience: 1969-70—Teaching and research assistant, Claremont Graduate School; 1971-73—Instructor, Rutgers University; 1973-77—Assistant Professor of Political Science, Rutgers University; 1977—Associate member, Graduate Faculty, Rutgers University; 1970-79—Assistant professor, Catholic University; 1979-83—Associate professor, Catholic University; 1983—Acting Director, Bureau of Justice Statistics.

ALFRED S. REGNERY

NOMINEE, ADMINISTRATOR, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, DEPARTMENT OF JUSTICE

Born: November 21, 1942, Chicago, Ill.

Legal residence: Fairfax, Va.

Marital status: Married, 4 children.

Education: 1971—J.D. University of Wisconsin Law School, Madison, Wis.; 1965—B.A. Beloit College, Economics and German, Beloit, Wis.

Bar: Wisconsin.

Military service: 1966-67—U.S. Coast Guard.

Experience: 1981-82—Deputy Assistant Attorney General, Land and Natural Resources Division, Department of Justice; 1978-81—U.S. Senator Paul Laxalt, Chief Legislative Counsel, and Chief Minority Counsel, Administrative Practice and Procedure Subcommittee (Judiciary Committee); 1972-77—Stroud, Stroud, Willink, Thompson & Howard, private law practice, Madison, Wis.; 1971-72—Melli, Smith & Shiels, private law practice, Madison, Wis.; 1967-68—East Coast representative, Henry Regnery Co., Book Publishers, New York City; 1965—College director, Young Americans for Freedom, Inc., Washington, D.C.

QUESTION AND ANSWER SECTION

RESPONSES OF STEVEN R. SCHLESINGER TO QUESTIONS OF SENATOR CHARLES McC. MATHIAS, JR.

NOMINEE'S VIEWS ON PRIVACY

Question. One of the most important aspects of BJS' mission is the enforcement of standards concerning the privacy of criminal justice records. Few agencies have such an explicit charter to think about issues of privacy.

In view of the importance of this issue to your responsibilities at BJS, I would like to ask you a few questions about your views on the right to privacy, as you articulated them in testimony before the Subcommittee on Criminal Law in 1981.

At that time you testified as follows:

"If criminal activity is predominantly a public concern, then when the police, *either legally or illegally*, find evidence of such activity, it is not an invasion of the individual's privacy to use what the police have found against him in a criminal proceeding . . . A location is not private if . . . crimes are committed or concealed there."

I find this view of privacy troubling. As one reviewer of your monograph on the exclusionary rule wrote, it seems to be an "ex post facto approach" to the privacy issue. It makes the individual's privacy rights depend on the outcome of a search. It also appears to conflict with the Fourth Amendment jurisprudence of the Supreme Court, which has consistently viewed some locations as presumptively private—for example, a private home. For example, the Court has held (in *Payton* v. *New York*, 1980) that:

"The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home . . . That language (of the Fourth Amendment) unequivocally establishes the proposition that at the very core stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion."

Do you find this formulation consistent with your view that "a location is not private if crimes are committed there"? I recognize that sometimes we give different values the same label, and that "privacy" does not necessarily mean the same thing in the Fourth Amendment context that it means with regard to criminal records. Nonetheless, because your understanding of Fourth Amendment privacy is so unorthodox, I would appreciate your comments on what you conceive to be the main issues in the right to privacy with regard to criminal justice information, particularly criminal records.

Answer. Your first question contains two parts:

1. I do not believe that the language quoted from Payton v. New York is necessarily inconsistent with the views expressed in my testimony or monograph. This is so because, as I said in my testimony, "a location is not private if crimes are committed or concealed there" and, as a consequence, a search of such a location cannot be termed an "unreasonable government intrusion."

This is not to argue that illegal police searches should not be deterred as effectively as possible, for example, through the use of an independent police review board created for this purpose and with disciplinary powers. It is to say that when the deterrent breaks down, when the police illegally uncover a crime, be it murder, rape, drugs, guns, etc.—the evidence they find should be admissible in a court of law. Furthermore, this argument justifies only the search for, seizure, and use in court of criminal evidence. It does not legitimate the use of excessive physical force by police officers or unnecessary damage to the personal property of the victim or of another person.

2. As you correctly intimate, however, my views on the constitutional basis of the right to privacy are irrelevant to my responsibility to discharge the JSIA statute's clear provisions concerning privacy and information policy.

In recognition of BJS's specific statutory mandate in this area, I have given particular consideration to these issues and clearly endorse the objectives of both the BJS legislative directive and the regulations promulgated thereunder. More specifically, I believe that among the key factors to be addressed at this time is the need to better protect the rights of individuals by ensuring that all criminal history records are maintained in as accurate and complete a status as possible. Although I realize that fiscal and administrative limitations may have impeded more rapid progress in this area, I believe that efforts must continue in order that all operational decisions based on criminal history information be supported by reliable and timely information.

I believe that another significant area of concern in protecting the privacy rights of the individual relates to the disclosure of criminal history records. Specifically, I believe that, as enunciated in the DOJ regulations, disclosures of non-conviction data should be consistent with stated policies regarding data access. I feel that this is important in order to ensure that non-criminal justice uses of criminal justice data properly reflect applicable governmental priorities and standards.

In this connection, I endorse the view that, as stated in the regulations, specific policy determinations regarding disclosure of State criminal history information should be the responsibility of the state.

As stated in the BJS legislation, however, I believe that BJS has clear responsibility to assist states in the identification of relevant policy issues and the development of appropriate procedures and standards. In this connection, I should note that BJS has issued four major documents tracing state privacy legislation and a series of Analytic Reports containing in-depth analyses of privacy issues relating to data disclosure. Additionally, BJS continues to support SGI (Search Group, Inc.) efforts to assure that states develop techniques to audit state policy compliance to ensure that the individual privacy rights established by applicable legislation and court rule are in fact available and guaranteed to individual record subjects.

NATIONAL CRIMINAL RECORDS SYSTEM

Question. As you know, there has been a good deal of discussion recently about the development of a computerized national system for criminal history records. The experts tell us that the technology for such a system is here. But there remain serious questions about the proper Federal role in operating such a system. Some of the specific problem areas mentioned are:

The need for uniform policies about record content;

Enforcement of standards for access to the records;

Record quality requirements, and audits of the records for accuracy.

It has been suggested that one agency that ought to play a part in devising and enforcing these Federal policies is the Bureau of Justice Statistics. There is, it seems to me, some merit in this suggestion, since BJS has had institutional experience with criminal records systems, and is one of the few Federal criminal justice agencies with a specific statutory mandate in the area of records privacy.

What are your thoughts about the appropriate role for your agency in the operation of a national criminal history records system?

Answer. In response to your second question regarding the National Criminal Records system, I agree that BJS should play an active role as one of the major participants in the formulation and implementation of overall policies and procedures relating to the establishment of a "national system for criminal history records."

As stated in your question, BJS and its predecessor organization have historically been leaders in the development and oversight of criminal history privacy standards and have monitored state legislative trends in this area over the past five years. Additionally BJS has played a major role in the establishment of the technical capabilities necessary to support such a system.

It is my hope, therefore, that BJS can, consistent with congressional determinations, continue to play a major role in the development of data standards, the coordination of data exchange policies and the ongoing review of national and state activities in this area.

RESPONSES OF STEVEN R. SCHLESINGER TO QUESTIONS OF SENATOR ARLEN SPECTER

Question. In your own view, that are your qualifications which best recommend you to be Director of the Bureau?

Answer. My qualifications to be Director of the Bureau of Justice Statistics (BJS) include:

(a) a doctoral degree in Political Science;

(b) twelve years of experience in criminal justice research (see attached vitae);

(c) my book on the exclusionary rule and my articles on Justice Harry Blackmun and on the deterrent effect of the exclusionary rule, which employ and analyze criminal justice statistics;

(d) my perspective as a user of criminal justice statistics; since the BJS mandate is to collect, analyze and disseminate justice statistics, I believe that my background as a user of these data is highly appropriate for directing and evaluating BJS statistical activities.

Question. Do you believe that your background in legal and political academics has adequately prepared you to carry out the statistical mandate of the Director of BJS?

Answer. Yes, because of the reasons spelled out in (c) and (d).

Question. It has been suggested that in addition to the continued administration of established national statistical series, the Bureau should develop data-collection mechanisms and analytical capabilities to enable it to provide information for streategic planning and decision making. Would you support such an "operational" focus by the Bureau?

Answer. Yes. Because BJS has fewer data on police and law enforcement than on other components of the criminal justice system (for example, courts, corrections, prosecutors), we are currently considering a major statistical series illuminating police activities and functions.

One of my highest priorities is to produce focused analytical reports which mine the statistical series and data bases that BJS has amassed over the past decade. These reports will be prepared by BJS staff as well as by lending consulting firms and academic researchers. Subject matters of these reports will include: career criminals and recidivism, the deterrent and incapacitative effect of incarceration, the experience of community-based corections (probation and parole), mandatory v. discretionary sentencing, bail reform, plea bargaining, police patrol strategies (aggressive v. passive patrol), the deterrent effect of police arrests, the exclusionary rule, the insanity defense, and habeas corpus reform.

Question. In fiscal 1982 the Bureau spent less than $1.2 million, or about 7 percent of its budget, on support to state and local criminal justice agencies to assist them in the development of information systems and policies. Would you support increased expenditures for the Bureau's information systems activities?

Answer. The principal focus of BJS spending for state and local criminal justice agencies in fiscal year 1982 and previous years has been to fund state analysis centers and state uniform crime reporting programs, funding which we intent to maintain in future years. funding support for information systems was a focus of this agency when it functioned under LEAA.

We have restricted support of information systems to those programs where there is a clear connection between the information system and the submission by states and localities of data for our national statistical series. I would expect that the 1982 level of funding would continue, therefore, to be roughly the amount that would be spent on information systems.

Question. What has the Bureau done to ensure the development of appropriate safeguards for the continued confidentiality of data in its automated recordkeeping system? What kinds of principles should the Bureau encourage the States to incorporate the State legislation and operational principles governing automated recordkeeping?

Answer. Although BJS, as a statistical agency, supports the collection of data describing the criminal justice process, no identifiable data files are maintained or operated directly by BJS. Section 818(a) of the BJS authorizing legislation, and the regulations promulgated thereunder (28 CFR Part 22), however, establish strict protections for all identifiable data collected for statistical purposes by BJS or under BJS-funded grants, contracts, and inter-agency agreements. Specifically, the legislation and regulations provide that data may only be used or released for statistical or research purposes and must be maintained under physically secure conditions. The legislation imposes at $10,000 fine for violation of these provisions.

With respect to state policies regarding automated record-keeping in the area of criminal justice, BJS endorses the policies set forth in Section 818(b) of its authorizing legislation and the supplementary regulations which are found in 28 CFR Part 20. These policies require that states develop procedures to ensure that criminal history information be maintained in as accurate and completed a format as possible, that data security is ensured, that individuals have the opportunity to review the contents of their own records, and that disclosure is consistent with applicable legislative policies and court rulings. We believe that these areas are critical to protecting the rights of those individuals about whom data may be included in state-operated systems.

Question. What efforts, in your view, should the Bureau make to fill the gaps in existing information systems; for instance, to provide data on public defender and bail agencies and on Federal criminal and civil operations?

Answer. I place an extremely high priority on filling gaps in national data bearing on the administration of justice. We have an active program to obtain information on public defender operations which will provide the first data on defender agencies and operations available since a 1974 survey. We have an active program--described in the attached BJS bulletin—to develop a data base in Federal criminal transactions or case processing. We have spent the last year in developing a study laying out options for development of Federal civil statistics and I intend to consult with key Departmental officials in the near future on which options to pursue, given the enormity of the undertaking. There continues to be an absence of data on the work of bail agencies, and I have initiated discussions with the national organization of bail agencies on the possibility of a statistical survey of this critical criminal justice function.

Question. How do you distinguish between research responsibilities that are properly the function of the National Institute of Justice and those which are within the ambit of the Bureau of Justice Statistics?

Answer. The line of demarcation between BJS and NIJ is not clearly drawn in the JSIA statute, as both agencies are charged with analysis of criminal justice data. However, I am involved in ongoing discussions with the Director of NIJ as to the proper boundary between us. In these discussions, I am proceeding in the belief that BJS activity should be oriented toward the collection, analysis, and dissemination of criminal justice statistics, whereas NIJ activity should be focused on research and evaluation of alternative criminal justice policies.

ADDENDUM

In addition, I am submitting for the record a response to the questions you raised with me during the course of the hearing concerning statistical evidence on the effectiveness of rehabilitation programs.

Gauging the effectiveness of correctional interventions, such as rehabilitation programs, in reducing recidivism, while not a primary objective of BJS data collection and reporting programs, has been incorporated in the major series on paroles (Uniform Parole Report) and the national surveys of prison and jail inmates. In addition, current plans for a national admission and release series will allow for greater linkage between parole outcomes and prior criminal and institutional history.

The parole area is viewed as the principal area where recidivism estimates can be developed. Perhaps the most important reason for this is the continuing contact with the offender by parole agencies which permits regularized assessment of post-release performance. Parole entry cohorts have been followed for up to three years after release from prison. By 1978, the 1975 parole entry cohort evidenced the following outcomes for 32,160 parolees:

Continued on Parole, 13.7 percent; Discharged, 58 percent; Return—Technical violation or minor conviction, 12.8 percent; Recommitted—New major conviction, 12.3 percent; Absconded, 1.8 percent; Died, 1.4 percent; Not Reported, .0 percent.

Overall, these data indicate that within three years, nearly 27 percent of the parolees had been returned to prison or absconded. What our data do not show is the nature of rehabilitation or other programs that were used with relation to these parolees.

The prison and jail surveys provide retrospective longitudinal portraits of the prior criminal justice system contacts and interventions experienced by the national inmate population. Survey data from 1979 indicate that about 64 percent of the prison population had a prior history of incarceration (7.9 percent juvenile, 29.0 percent adult, 22.8 percent both). Extensive analysis is currently being conducted to examine these offenders in terms of their patterns of offending and recidivism, including both their juvenile and adult involvements with the justice system.

Finally, the issue of recidivism has received substantial attention as a result of recent work sponsored by NIJ. A major grant to the National Academy of Sciences resulted in a two-volume study on the effectiveness of correctional programs. The NAS report strongly recommended that such assessments be grounded in rigorously controlled experiments. NIJ subsequently funded Research Triangle Institute to conduct a randomized experiment in community service sanctions in Baltimore City in concert with the methodology proposed by NAS. Secondly, NIJ funded a thorough methodological development effort by Professor Michael Maltz at the University of Illinois at Chicago Circle in the area of recidivism measurement. Dr. Maltz's efforts have resulted in numerous professional articles and a soon-to-be-published book on recidivism.

In sum, our efforts have been focused upon supporting NIJ research in this area, as recommended by NAS, and incorporating outcome measurement into our ongoing corectional series.

U.S. Department of Justice
Bureau of Justice Statistics

Bureau of Justice Statistics
Bulletin

Federal Justice Statistics

Fifty years ago the Wickersham Commission, this country's first national crime commission, published a report on criminal justice statistics, noting as a basic principle that accurate statistics are a key to understanding and improving the administration of justice. The 1931 report, bearing the name of a former Attorney General, noted also that such statistics did not exist: "Accurate data are the beginning of wisdom in such a subject, and no such data can be had for the country as a whole, nor have they even been available hitherto with respect to many of the activities of the Federal government in the enforcement of Federal laws."

A comprehensive Federal transaction data base would reflect all transactions occurring in the investigative, prosecutorial, judicial, and correctional segments of the criminal justice system that describe successive actions taken with respect to the same criminal event. Ironically, while the Federal government has over the past decade encouraged and assisted the States in developing comprehensive State-level transaction data, the Federal justice system itself has not experienced comparable progress toward that end. There exists no body of comprehensive statistics about Federal offenders and little information about the flow of cases from Federal investigators to U.S. Attorneys and on through the Federal court and corrections systems.

March 1982

Felix Frankfurter opened a study which he and Roscoe Pound directed in 1921-22, of the administration of criminal justice in Cleveland, Ohio with the following words: "The inquiry had two aims: first, to render an accounting of the functioning of this system, to the fullest extent that social institutions are as yet adapted to statistical appraisal; and, second, to trace to their controlling sources whatever defects in the system the inquiry disclosed." The then Professor of Administrative Law and then Dean of the Harvard Law School placed at the heart of their "scientific study," the examination of 3,236 case records of "individual offenders" who passed through the Cleveland courts in 1919 and of 1,322 "prisoners in the workhouse" whose sentences were terminated during 6 months of 1920.

In the intervening years many lawyers and social scientists have followed the methodological precedent of Pound and Frankfurter, recognizing the enormous diagnostic power of processing or transaction data in understanding the "defects" of our present-day, but often little-changed, criminal justice systems.

One of the most important legacies of the statistical programs conducted by the Law Enforcement Assistance Administration in the last decade was the progress made by States and cities in developing what are called offender-based transaction statistics, frequently in conjunction with computer-based information systems also linked to criminal history information.

With the establishment of the Bureau of Justice Statistics in 1979 came the statutory responsibility to expand our "statistical appraisal" to Federal justice systems. We embark on this effort recognizing all the sensitivities that surround such an enterprise—separation of powers, matters of accountability, privacy and confidentiality of data, conflicting goals and objectives. Yet the obligation to view the Federal system as a whole and "to render an accounting of the functioning of this system" is there; with a grateful acknowledgment of the help we have received from the Federal agencies named here, this bulletin initiates our efforts to meet that obligation.

Benjamin H. Renshaw III
Acting Director

Comprehensive criminal justice statistics: Uses, barriers, and methods

Statistics describing the components of State criminal justice systems are now routinely maintained at the State level. Although the systems vary in comprehensiveness and data quality from State to State, they have become increasingly important in every jurisdiction as the needs have increased for improved criminal justice planning, fiscal control, policy assessment, and response to legislative requests for information (for example, to analyze the impact of determinate sentencing systems).

The needs to plan, to support the fiscal process, to assess policy, and to respond to legislative inquiry exist as well at the Federal level. The data to meet these needs, however, have not been maintained at the Federal level as they have at the State level.

Improved justice statistics for the Federal system are needed for more than planning, control, and policy assessment at the Federal level. They are also essential to enable Federal authorities to respond to Attorney General William French Smith's directive to enhance coordination between the Federal and State and local criminal justice systems by establishing Law Enforcement Coordinating Committees. A prerequisite to effective coordination is a basic understanding of the relative magnitudes of case flow from one stage of Federal criminal case processing to adjacent stages.

Barriers to developing comprehensive justice statistics that have been confronted at the State level exist at the Federal level as well. Independent data systems have been developed and maintained by Federal investigative agencies, the Executive Office for U.S. Attorneys, the Administrative Office of the U.S. Courts, the Federal Prison System, and ancillary Federal agencies. As a result, data definitions vary from agency to agency, as do reporting periods and crime classification schemes. These barriers make the prospect of developing a comprehensive Federal transaction data base incorporating the various data sets maintained by Federal agencies fairly difficult, at least for the near term. They also limit the inferences to be drawn from comparing the reports of different justice agencies.

Specific uses of available data to assess Federal criminal justice policy are numerous, even prior to data linkage. Simple numeric descriptions of Federal case flows and events can reveal the frequency with which specific problems, such as crimes committed while on bail and bail jumping, actually occur. The data can also be used to assess a host of other issues:

- case referral policies and rates of case flow between Federal and local agencies;
- the quality of evidence and investigations;
- rates of pretrial misconduct and the criteria used in making pretrial release decisions;
- rates of recidivism and chronic-offender case-targeting decisions;
- delays in case processing at each stage of the system; and
- consistency in case-processing and sentencing practices.

Although the case record can serve as the basis for many of these analyses, the data could be reorganized to allow addressing other issues. For example, studying recidivism and its predictors requires that the data be reorganized to describe offenders rather than current cases. Likewise, a study of arrest quality might require that the data be restructured to focus on Federal investigative functions rather than individual cases. Similarly, studying case backlogs may require a reorganization of the data by unit of time.

Analyses such as these require a thorough understanding of the structure of the system, of the issues relevant to system operation, and of the data as they relate to those issues.

The accompanying chart and discussion describe the fundamental stages of Federal case processing. The schematic has simplified what in fact is an extremely complicated set of interactions among individuals, cases, and organizations. Accordingly, it does not provide an inclusive description of the many processing options available at the various decision points in the system, nor does it in all cases draw the distinction between the movement of the offender and his case record. The chart is intended to identify, however, those processing stages which should be reflected in a comprehensive Federal statistics data base.

The Federal system

The Federal criminal justice system is divided into 94 judicial districts. Each has a Federal District Court and a U.S. Attorney. According to the Administrative Office of the U.S. Courts, approximately 50,000 criminal cases a year enter this system. Basic similarities exist between the way these cases are processed and the way cases are usually handled at the State and local levels, but there are also some fundamental differences. At the Federal level, as at the State and local levels, criminal justice responsibilities are divided into the components of law enforcement, prosecution, adjudication and sentencing, and corrections.

The Federal system is perhaps most readily distinguishable from State and local systems in terms of the kinds of crimes unique to Federal jurisdictions, including major crimes (e.g., major drug offenses and crimes of serious fraud and corruption), crimes that cross State boundaries (e.g., interstate transport of stolen property, cargo theft), crimes involving Federal money (e.g., counterfeiting, forgery of U.S. checks), and crimes committed on U.S. Government property.

Criminal offenses that are investigated and prosecuted at the Federal level typically do not involve crimes of violence. These are commonly handled at State or local levels. Federal criminal cases usually result from long-term investigations of such crimes as embezzlement, fraud, drug dealing, or forgery. These cases may involve offenders who have committed many offenses over several months or years or have stolen large sums of money.

Five investigative agencies conduct a substantial majority of the investigative work done at the Federal level: the Federal Bureau of Investigation, the Drug Enforcement Administration, the Secret Service, the Postal Inspection Service, and the Bureau of Alcohol, Tobacco, and Firearms. Other Federal agencies, including the Customs Service, the Internal Revenue Service, the Food and Drug Administration, the Immigration and Naturalization Service, the Securities and Exchange Commission, and individual executive departments also employ investigators to monitor infractions that are the responsibility of those agencies. Investigative activities include crime detecting, evidence collecting, making arrests, presenting cases to Federal prosecutors, and conducting followup investigations.

Prosecuting Federal cases is the responsibility of the Department of Justice litigating divisions and the Office of the U.S. Attorney in each district. U.S. Attorneys are appointed by the President but generally have long-standing familiarity with the concerns of their districts. They are supported in Washington, D.C., by the Executive Office for the U.S. Attorneys.

Many, if not most, Federal crimes are "dual jurisdiction" offenses that may be prosecuted either federally or locally. The decision by a U.S. Attorney to prosecute a bank robbery, for example, may rest on such factors as the seriousness of the offense, the prior record of the offender, policies of the agencies involved, and the degree of involvement of local law enforcement officials in investigating the offense. Generally, the Federal government will prosecute cases brought by Federal agents when the cases meet the U.S. Attorney's standards of seriousness and have enough evidence to merit prosecution.

In addition to the 94 U.S. Attorneys and the 94 Federal district courts, there are 12 circuit or appeals courts and the Supreme Court of the United States. Statistical information about case processing in the judicial branch of the Federal system is maintained by the Administrative Office of the U.S. Courts.

After receiving sentences, convicted offenders in the Federal system may be turned over to the Division of Probation in the Administrative Office of the U.S. Courts or to the Bureau of Prisons. Offenders sentenced to incarceration are confined in one of the 42 Federal correctional facilities located throughout the country.

Eligibility for parole is determined using guidelines developed by the Federal Parole Commission. These guidelines permit evaluating each Federal inmate on the basis of offense seriousness and relevant aspects of the inmate's criminal history.

Federal data sources

The agencies that make up the Federal criminal justice system maintain a variety of data that document the processing of cases and defendants within each agency and describe the criminal record of individual offenders. At the investigation stage there are several automated data bases, including the FBI's Computerized Criminal History File (CCH); the Criminal Automated Reporting System of the Bureau of Alcohol, Tobacco, and Firearms; and the automated files maintained by the Drug Enforcement Administration and the Secret Service. Also, manual files are maintained by other agencies that engage in investigative work.

Information about the cases processed by the U.S. Attorneys is maintained by the Executive Office for the U.S. Attorneys in its Docket and Reporting System. The system provides data about criminal (and civil) case rejections, filings, and dispositions.

Court data maintained by the Administrative Office of the U.S. Courts in the Automated Docket System provide information about criminal case filings and terminations in the Federal Courts. The "termination" file contains offense, disposition, and sentencing information.

Finally, the Federal Bureau of Prisons uses automated prison records to monitor the confinement and release of Federal offenders.

In addition to the data bases listed above, special-purpose data sets provide a variety of information about Federal defendants, cases, and practitioners. These include:
- the U.S. Parole Commission longitudinal recidivism files;
- pretrial release data maintained by the Federal Pretrial Services Agency;
- COURTRAN files designed by the Federal Judicial Center that provide automated court records for 11 Federal districts;
- Prosecutor's Management Information System (PROMIS), currently in two U.S. Attorney's offices, with plans to extend it to other offices;
- other data developed as part of specific studies sponsored by Federal agencies (e.g., coded presentence investigation reports).

Conclusion

Maintaining statistical information about the Federal criminal justice system is not an easy task. It is one that at present is done primarily within each district and aggregated nationally by the numerous agencies operating separately within the Federal executive and judicial branches.

Movement toward a comprehensive system of Federal criminal justice statistics would certainly help to improve understanding of Federal case processing and enable the various agencies of the Federal justice network to conduct analyses that are needed to enable them to carry out their mandates. It would also foster better coordination both within the Federal government and between the Federal and local systems.

The Bureau of Justice Statistics has undertaken to build toward these ends. Currently, efforts are being directed toward a comprehensive review of Federal data sources to determine the feasibility of developing an integrated data base. BJS will also release a major Compendium of Federal Criminal Justice Statistics, which will provide a single-source reference to criminal justice statistics describing the Federal criminal justice system. Additionally, reports will be issued that analyze statistical data relevant to particular priority issues associated with the Federal offender and the Federal criminal justice system.

Bureau of Justice Statistics bulletins are prepared principally by the staff of the bureau. Carol B. Kalish, chief of policy analysis, edits the bulletins; Marilyn Marbrook, head of the publications unit, administers their publication, assisted by Julie A. Ferguson. This bulletin was written by Brian Forst of INSLAW, Inc. (formerly the Institute for Law and Social Research), Washington, D.C.

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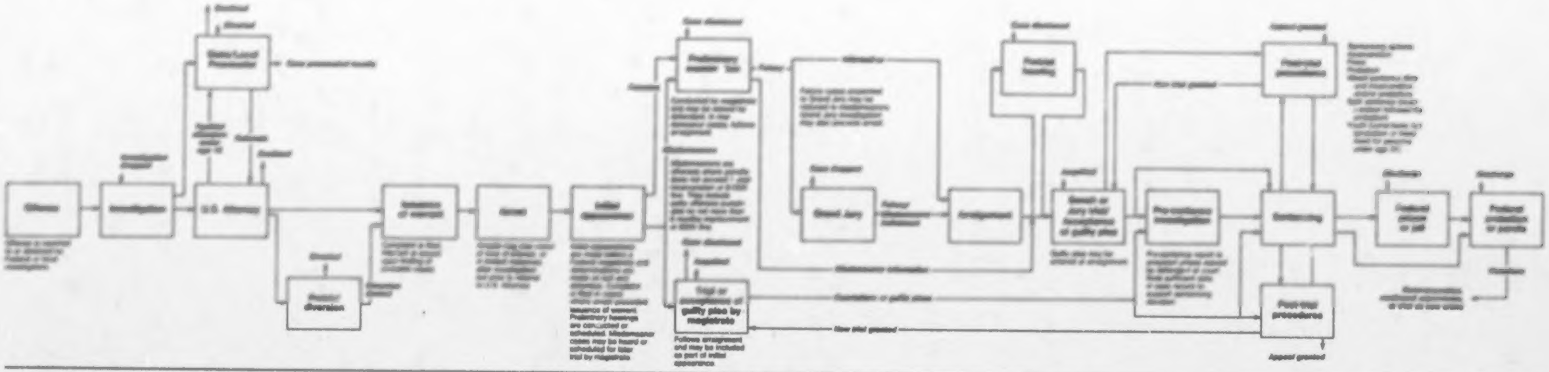
Washington, D.C. 20531

The Federal Criminal Justice Case Processing System


U.S. Attorney
Pretrial diversion
Grand Jury
Arraignment
Sentencing
Trial or acceptance of guilty plea by magistrate
Follows arraignment and may be included as part of initial appearance
Post-trial procedures
Appeal granted
New trial granted

Federal Criminal Justice Data Sources

Data sets listed are routinely maintained by Federal agencies. Other data sets exist or have been developed to support special-purpose projects or studies.

Investigative data files

Federal Bureau of Investigation

Drug Enforcement Administration

Secret Service

Postal Inspection Service

Bureau of Alcohol, Tobacco and Firearms

U.S. Attorney data files

Docket and Reporting System

Prosecutor's Management Information System (PROMIS)

Adjudicatory data files

Administrative Office of U.S. Courts filing and termination tapes

Court Dockets from Courtran System maintained by the Federal Judicial Center in selected Districts

Pretrial Services Agency (AOUSC) bail ("Speedy Trial") data

Sentencing data files

Administrative Office of U.S. Courts

Docket and Reporting System (U.S. Attorneys)

Correctional data files

Bureau of Prisons inmate data

U.S. Parole Commission parole data

Bureau of Justice Statistics
March 1982

Responses of Alfred S. Regnery to Questions of Senator Charles McC. Mathias, Jr.

DELINQUENCY PREVENTION

Question. General.—I know that there was a lot of talk about delinquency prevention during your confirmation hearing. It troubles me that you have taken the position that the primary emphasis of OJJDP's programs should be on prosecution and enforcement rather than on prevention. I have been told that you consider OJJDP's past efforts in this area entirely ineffective, and, moreover, that you do not consider the Office the appropriate agency to administer delinquency prevention programs. I find that difficult to understand, since the word "prevention" appears in the statute nearly 100 times.

In light of these and other comments you have made about delinquency prevention in general, and OJJDP's role in prevention specifically, I am curious to know what your basic philosophy of prevention is. Do you think delinquency prevention is possible? Other than Law-Related Education, what kinds of programs do you believe would be effective? Please be specific. (You need not limit yourself to programs that OJJDP, itself, would administer. I am primarily interested in learning how you, as an important new member of the juvenile justice community, feel about these issues.)

Answer. I do not have any exact or specific definition of delinquency prevention. I am aware that delinquency prevention is mentioned approximately 100 times in the JJDP Act, and am aware that no where is the term defined. Delinquency prevention has become many different things to many different people. It is classroom instruction to a general school population on the rights and responsibilities of being a citizen, as well as diversion, as well as improving the services in a correctional system so a youthful offender can learn a trade so that when he gets out on the street, he finds it easier to obey the law. While I prescribe to all facets of delinquency prevention—primary, secondary, and tertiary—I have very definite feelings as to which ones the federal government should be directly involved in and what the role of the federal government should be. The Office will continue its efforts in the area of tertiary prevention, that is improving the justice system so that those youth who are in the system do not get in trouble again. In this regard, almost any improvements on the various justice system components can and should be viewed as prevention. As for primary prevention, i.e., those activities that deal with the general population, we will have the Coordinating Council direct its focus in this area. As stated by the National Council on Crime and Delinquency (NCCD) in its evaluation of our delinquency prevention program, "Primary prevention is too vast a goal for OJJDP to accomplish via its own direct funding. OJJDP should organize its primary prevention program around its Concentration of Federal Efforts program." The Council agencies fund approximately thirty programs totalling several billion dollars which conceivably could be used for primary delinquency prevention efforts. I believe that the programs that are the most effective are those institutions that have a tremendous impact on delinquency prevention are those same institutions that the federal government has little control over, i.e., families, schools, and communitities.

Question. Federal Coordinating Council.—One justification you have put forward for taking OJJDP out of the business of deliquency prevention is that such programs are better handled by the members of the Federal Coordinating Council on Juvenile Justice and Deliquency Prevention. Have you made it clear to the member agencies that you think they should have the main responsibility in this area? What specific programs are currently being implemented by the member agencies of the Council? At the Council's meeting in March, was there any discussion of new programs or any planning for the future?

You have said that the Council is better equipped to handle prevention programs because the aggregate funds of the member agencies far exceed the entire budget of OJJDP. What "aggregate funds" are you referring to? Do you mean the sum total of the annual appropriations of each of the Council's members? Or do you mean the total funds specifically set aside for juvenile justice and delinquency prevention programs by each member of the Council? What is the budget of Council members for juvenile justice and delinquency prevention programs? I understand that you may have to estimate, but please be as specific as possible.

Answer. The Council, as stated in the first question, will have primary responsibility for primary delinquency prevention efforts and share responsibility for secondary delinquency prevention efforts. The Office will continue to carry on training reseach and data collection. (See attached for other agencies' delinquency prevention efforts.)

In fact, other agencies of the federal government do have principal responsibility for primary prevention efforts. They spend somewhere between one and two billion dollars a year on such efforts. Since Congress gave the Coordinating Council the duty of coordinating these efforts by statute, it seems to me that we must attempt to do so. As I outlined the role the Coordinating Council would play at the March 24th meeting, representatives of HHS, Education, ACTION, and Labor agreed with me and believed that my outline of responsibility would be an effective one.

Regarding funding, I do not know what the total available budgets of the member agencies is. The figure used at the hearing is the agencies' estimate on what they now spend on juvenile delinquent prevention programs.

My staff is presently inventoring and analyzing all federal prevention programs. When that is done, the Council will review the program to try to assess what needs to be done.

By aggregate of funds, I refer to the general appropriation of each agency. To my knowledge, no agency appropriates a specific sum towards Coordinating Council activities.

Question. Technical Assistance.—At your confirmation hearing, you said that one way in which OJJDP will continue to be involved directly in prevention is through providing technical assistance to the states. It is my understanding that through the Formula Grants and Technical Assistance program of OJJDP, the vast majority of technical assistance to states and localities has been provided by one federal contractor, Westinghouse National Issues Center's Delinquency Prevention Technical Assistance program. Yet, you have not renewed the Westinghouse contract. Who will be providing technical assistance in the future? Will these providers be able to bring the same centralization of effort and knowledge Westinghouse was able to provide?

Your justification for the non-renewal of the Westinghouse contract has been that it provides services to a very small number of schools. I believe that you are specifically referring to their "School Enhancement Research and Development Program," which serves seven schools in six states. However, isn't this only one of the programs in which Westinghouse has been involved? To my knowledge, they have assisted a wide variety of community projects in over 30 states since 1978. Technical assistance is no longer provided in five of these states because, with the help of Westinghouse, they have been able to develop and maintain independent, community-based programs, and no longer need Federal assistance. Isn't it the aim of Federal assistance to help local programs get off the ground, lending support until they can fly on their own? If so, it seems to me that the Westinghouse program has been highly successful in the states mentioned above.

Please explain fully and specifically your reasons for discontinuing the Westinghouse contract.

Answer. I did not renew the contract with Westinghouse because I did not find it to be cost-effective. The contract renewal was for $850,000 for an eighteen-month period, or approximately $51,000 per month. Westinghouse provided technical assistance to state and local governments and to our grantees at our request. The technical assistance was mostly to schools, and was intended to change the curriculum of schools in the area of delinquency prevention. The schools which it was focusing on were not those which had "high risk" children, but rather, those which taught the general population. I had my staff check carefully to find out how much use had been made of the Westinghouse contract previously, and learned that only seven schools had used the contract in the past year (there are 45,000 school districts in the United States). Furthermore, only several states had ever requested assistance from Westinghouse.

Because we are attempting to concentrate on the justice system, and on prevention as it applies to those who have already become involved in the justice system, I have found that providing technical assistance to schools was something that could be better handled by the Department of Education.

Question. Law-Related Education.—I was pleased to learn that Law-Related Education will receive adequate funding for fiscal year 83. I have found the work of five national programs which specialize in LRE to be of tremendous value in delinquency prevention.

For the last two years, the Law-Related Education Evaluation Project has been an integral part of the overall LRE effort. The five national programs have expressed their strong support of the Evaluation Project's work. They have all indicated that their own programs would be far less effective without it. Rarely has an evaluator been so well-regarded by those it evaluates.

In light of this, I find your decision to discontinue the Project very troubling. Would you please explain why you chose to terminate the Evaluation Project? What, in your view, will be the effect of that decision on LRE as a whole?

Answer. I have made no final decision with regard to the continuation of funding for the Law-Related Education Evaluation. I have recently signed a no-cost extension for this effort and will conclude my consideration of supplemental funding prior to the expiration of the current grant.

THE FAMILY

Question. In your comments before the National Advisory Committee on January 17, 1983, you said that "we need to do some research and identify federal and other government programs that have been detrimental to a stable family—and there are certainly a lot of those. . . ." To what specific programs were you referring?

Answer. I think that your quotation of my January 17, 1983, remarks on the topic of governmental programs detrimental to the stable family is inaccurate. In any case, I meant at the time to pose the question of whether we should determine if there are such programs. People often make reference to such programs and my inquiry was intended to discern the truth of these assertions. I understand the Department of Health and Human Services has conducted a survey which reveals certain programs of the federal government which may be detrimental to the stability of the family.

HIT LIST

Question. At your confirmation hearing, there was as a lot of talk about the alleged juvenile justice "hit list," mentioned in the April 2 edition of the Washington Post. Although you addressed this issue in part at the hearing, I am concerned about two organizations mentioned in the article. One is the National Youth Work Alliance (NYWA). What are your plans for NYWA's future funding?

The Children's Legal Rights Information and Training Project (CLR) was also part of the alleged hit list. The only "Law-Related Education" program to be discontinued, CLR was unique among the LRE programs in that it trained juvenile justice professionals rather than working directly with juveniles. The program has received consistently good evaluations since 1978, and was unique in its emphasis. What, then, were your reasons for terminating it?

Answer. As I stated at the confirmation hearing, I have never seen the "hit list" of which you speak; furthermore, no project has been designated as a special target. The two training projects of which you ask are in the following status:

Handling of Serious and Violent Offenders in the Community (National Youth Workers Alliance). This project continues until the end of May. Continuation is being considered as a part of overall program considerations and a decision will be made soon.

Children's Legal Rights Information and Training (Children's Legal Rights Center). This is one of six separate projects in the Law-Related Education program. The primary purpose of federal funding in fiscal year 1983 for Law-Related Education was to assist in the institutionalization of the program. Relying upon the advice of staff, I decided to continue funding those grantees whose efforts were deemed most important for the institutionalization purpose.

PROGRAM EXPENDITURES

This section provides an overview of the magnitude and nature of the Federal financial commitment to juvenile delinquency programs. The trends and patterns in expenditures for the 45 programs included in this year's report are analyzed. The section describes:

- The estimated spending by these programs on youth, delinquents, and institutional services;
- The trend in obligations for the 1974-1980 period;
- The trend in outlays for the 1970-1979 period; and
- The geographical distribution of 1979 program outlays, including State-level analysis of total outlays (with percent distribution) and per capita outlays.

This section also relates State-level outlays to five indicators of "need"--total 1979 population, 1979 unemployment rate, all juveniles in public juvenile detention and correctional facilities in 1975, neglected and abused children in 1975, and the 1979 UCR Crime Index.[10]

ESTIMATES OF EXPENDITURES ON YOUTH AND DELINQUENT POPULATIONS

Some of the programs included in this study are broad human service programs that provide services to adults as well as to youth. Although the 45 programs had total obligations of $15.74 billion in 1980, this figure grossly over-estimates expenditures targeted to youth in general and delinquents in particular. Consequently, the survey asked each program to respond to the following questions:

- What percentage of the fiscal year 1980 obligation would you estimate was expended on all clients under 18 years of age?

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[10] Sources for these data were: (1) 1979 population--U.S. Census Bureau, Estimates of Population, 1979; (2) 1979 unemployment rate--Employment and Training: Report of the President (1980), Table D-4, p. 325; (3) All juveniles in public juvenile detention and correctional facilities, 1975--Sourcebook of Criminal Justice Statistics 1979, p. 624; (4) neglected and abused children, 1975--Sourcebook of Criminal Justice Statistics 1979, p. 761; and (5) UCR Crime Index, 1979--Crime in the United States 1979.

- What percentage of the fiscal year 1980 obligation would you estimate was expended on adjudicated delinquent clients under 18 years of age?

- What percentage of fiscal year 1980 obligations would you estimate was expended on institutional services.

These questions provide data that may be used to adjust each program's total 1980 obligation, providing, respectively, an index of youth expenditures (YEI), and index of expenditures on delinquents (DEI), and an index of institutional expenditures (IEI).

Estimates of the percentage of program expenditures on all clients under 18 years of age were available for 33 programs.[11] Table II-19 presents the total fiscal year 1980 obligation, the estimated percentage expended on youth and the calculated YEI (fiscal year 1980 obligation multiplied by the percent expended on youth).[12] The total fiscal year 1980 obligation for these 33 programs is $7.41 billion compared to a total YEI of $4.34 billion.

Because of the number of non-responses (12), the $4.34 billion figure obviously understates the total amount of 1980 Federal funds expended on youth under 18. Of the remaining 12 programs, representing $7.96 billion in total obligations, the CETA programs account for $6.9 billion. From data supplied by CETA officials, it would appear that between 40-80 percent of the funds for CETA Title IV youth programs ($1.6 million) is expended on youth under 18 (and almost all is expended on youth under 22). Under Titles II and VI ($5.3 million), only a very small fraction of the funds is expended on youth under 18, although an estimated 22-48 percent is expended on youth under age 22. The majority of the other programs that did not respond are educational programs targeted at elementary and secondary school children. Consequently, it would appear that $5.5 billion would be a reasonable estimate of the total funds expended on youth under age 18 by the 45 programs.

This figure represents less than 1 percent of the total 1980 U.S. budget outlay of $563.6 billion.[13]

Table II-20 presents the nine programs that indicated that a portion of their spending was on delinquents. For each program, the table includes the estimated fiscal year 1980 obligation, the estimated percentage of these obligations spent on delinquents and the index of expenditures for delinquents (DEI). The total obligation for these nine programs was $579.31 million. The DEI was $60.98 million or 11 percent of the nine program total obligation. Most programs indicated that they did not know what percentage of funds was expended on delinquent youth. Six programs indicated that no funds were expended on this group.

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[11] For 26 programs, estimates were based on the survey questions listed above. For the remaining seven, estimates were derived from other written information submitted by the programs.

[12] All tables and figures referenced in this section appear at the end of the section, beginning on page 64.

[13] The United States Budget in Brief--1980, p. 69.

Table II-21 presents the 9 programs that indicated that a portion of their spending was on institutional services. The total fiscal year 1980 obligation for these programs was $396.88 billion while the total IEI was $108.56 billion or 27.3 percent of the total. Eight programs indicated that no funds were expended on institutional services.

Table II-22 summarizes the information concerning the YEI, DEI, and IEI. These indices are under-estimates due to missing data and non-responses to the questionnaire. However, they do provide some insight as to the magnitude of Federal spending on youth, delinquents, and institutional services for youth.

LONGITUDINAL TRENDS IN PROGRAM EXPENDITURES

This section discusses patterns in program obligations for the period 1974-1979 based on data presented in the Catalog of Federal Domestic Assistance (CFDA), and patterns in outlay data (Community Services Administration) for the 1970-1979 period. The programs discussed include only financial award-granting youth programs. Programs that conduct research, deliver services directly, or provide training and technical assistance were not included. In addition, the historical analysis does not include other youth-serving programs that may have been in operation between 1970 and 1978 but that were terminated prior to 1979.

The overall pattern is clear: both the number of programs and their dollar size have increased during the 1970s. However, it is important to recognize that, within this pattern of growth, some programs experienced significant decreases in funding and a number of programs came in and out of existence. Such trends are the result of many factors, not the least of which is the relative newness of the programs within this sample. Initial growth followed by consolidation in spending is a pattern observable among the programs.

Obligations for the period 1974 to 1980 are presented in Table II-23. Note the growth in both the number and the size of the programs included in this study. In 1974, there were 22 programs. By 1977 the number had increased to 36 programs and in 1980 it had reached 40 programs, an 82 percent increase.[14] The growth also is apparent in the average dollar amount for the programs. Table II-24 shows the average obligation level for 1974 as $151 million, while in 1977 it had grown to $411.80 million. By 1980, however, the estimated average amount was down to $384 million, reflecting an increase of 154 percent over the six year period. If the CETA program is excluded, the changes in the average obligation size are somewhat moderated. Excluding CETA, the average obligation level was $140 million in 1974, $194 million in 1977, and $194 million in 1980, a 54 percent increase over the six-year period.

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[14] CETA is counted as a single program; the HUD Anti-Crime Program and the Office of Domestic Violence are excluded from this analysis because they are not listed in the Catalog.

Percentage changes in the annual level of obligations are also presented in Table II-25 by program. Note the considerable variation across most programs, and within each year. For example, 13.529 (Emergency School Aid Act--Grants to Non-Profit Local Agencies) declined each year from 1974 to 1980 and averaged an overall decline of 25 percent over the six year period. In contrast, 13.429 (Educationally Deprived Children--Migrants) increased each year and had an overall increase of 167 percent over the six years. Table II-26 summarizes these percent changes in program obligations. The changes in obligation levels have varied considerably by program over this six-year period, but have generally increased throughout. A comparison of the average percent change in these youth-serving programs to the percent change in total U.S. Budget Outlays indicates that, as a group, these programs grew more rapidly than Federal programs as a whole (see Table II-26). This difference may be explained, however, by the fact that a large proportion of the youth-serving programs surveyed were initiated during this time period and grew rapidly initially before leveling off or declining.

Finally, Table II-27 compares the number of programs that experienced increases each year to the number that experienced decreases. Increases clearly dominate, with the greatest increase, 89 percent, occurring in 1978.

In Tables II-28 to II-32 the 10-year outlay history is presented for the sample of 40 programs.[15] These data reflect the same trend observed in the six-year obligations data. Program outlays grew from $44.7 million in 1970 to more than $17.4 billion in 1979. The last two years of this 10-year period account for 51 percent of total outlays. Note also that the number of program outlays increased from one in 1970 to 55 in 1979.[16]

As may be observed in Table II-29 the Department of Health, Education and Welfare accounts for 62 percent of the program outlays between 1970-1979 in this sample and 51 percent of total dollar outlays.[17] DOL and HEW together account for 73 percent of the programs and 94 percent of the total dollar outlays.

It is important to note that these figures represent changes only in the programs included in this study. They do not represent a comprehensive picture of changes in expenditure for all delinquency-related programs in operation during the period 1970 through 1979, since programs that went out of existence before 1979 were not included in this analysis.

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[15] See page 12 for a description of the CSA outlay data.

[16] The one identifiable outlay in 1970 was 10.881 (Cooperative Extension Service); because of incomplete reporting and reorganizations, data quality and completeness improve significantly after 1974.

[17] A "program outlay" in this context means a specific outlay category. Most programs have but one outlay category although a few have several. An "outlay category" is the type of financial assistance through which the money is expended, e.g., project grants.

A third perspective on this sample of programs is provided in Table II-30 in which the outlays are aggregated for the 10-year period by types of financial assistance. Formula grant outlays account for 87 percent of all dollar outlays over this period; project grants, which represent 51 percent of the programs, only account for 12 percent of the total dollar outlays. Other types of assistance are a relatively small portion of the $59.2 billion spent during this period.

The growth of expenditures by Department and by type of assistance is displayed graphically in Figures II-7 through II-10. Figure II-10, "Other Types of Assistance" refers to (1) contractual procurements; (2) salaries and expenses; (3) direct payments; and (4) other types of grants. It is clear from these graphs that the rapid growth in formula grant programs significantly outstrips the very modest growth in programs providing discretionary project grants and other types of assistance.

GEOGRAPHIC DISTRIBUTION OF PROGRAM OUTLAYS, 1979

Prior sections of this chapter have been concerned with the types of services funded and the target groups affected by these programs. In this section, the focus is on where these funds are being spent. Total outlays and per capita outlays by State for 1979 are analyzed. Finally, this section looks at how the State by State outlays correlate with selected indicators of need, such as population, unemployment rates and crime rates.

Table II-33 presents the outlays for each State by type of assistance. As might be expected, California and New York (10.89 percent and 10.19 percent) received the largest formula outlays as well as the largest project outlays in 1979. In contrast, the States receiving the smallest portion of the formula outlays were Wyoming (.13 percent), Vermont (.23 percent) and North Dakota (.28 percent); States receiving the smallest portion of project grant outlays were Wyoming (.19 percent), Delaware (.24 percent) and North Dakota (.32 percent).

The statistical maps presented in Figures II-11 to II-13 divide the States into the bottom third (smallest outlays), upper third (largest outlays) and middle third for, respectively, formula grants, project grants, other types of assistance and total outlays. Observe in Figure II-10 that the larger, more rural, western States and the smaller New England States are in the bottom third category for both formula and project grants. In general, it would appear that the observed patterns are highly correlated with State population, with the obvious exception of "Other Types of Assistance," which is dominated by DOI--Indian Affairs programs that concentrate funding in areas of high Native American concentration.[18]

Five States--New York, California, Texas, Pennsylvania, and Illinois account for approximately one third of all formula grant outlays. Similar concentration of program outlays is apparent with project grants.

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[18] Anton, op. cit., p.39.

Per capita outlays are a convenient and easily understood alternative indicator to total outlays that facilitates inter-State comparisons. Table II-34 displays per capita total outlays while Table II-35 aggregates these per capita estimates by region. Excluding the District of Columbia, the States with the highest per capita formula grant outlays are Alaska, New Mexico, Arizona, Mississippi, and Montana.

States with the lowest per capita formula grant outlays are Minnesota, Iowa, Texas, Oklahoma, Wyoming, and Wisconsin. Figures II-14 to II-16 present these data in map form.

Table II-36 summarizes the total and per capita outlay data by ranking the states from 1-lowest to 51-highest. Note that California, which is ranked 51 (highest) in total outlays, is ranked 33 in per capita total outlays and Wisconsin, which is 32 in total outlays, is 1 (lowest) in per capita outlays.

INDICATORS OF NEED

Five indicators of "need" were used to examine possible relationships between spending patterns and delinquency-related problems. Table II-37 presents the correlation between the selected indicators and total outlays. Note the high correlations between formula and project grant outlays and total population. Interestingly, the unemployment rate, even though a significant factor in the CETA formula allocations, is only slightly correlated with outlays. The distribution of outlays is strikingly correlated with the institutional and children in need of supervision indicators, while the crime index is only slightly correlated.

Table II-19. YOUTH EXPENDITURES INDEX BASED ON FY 1980 OBLIGATIONS (In millions of dollars)

Federal Catalog No.	Program Name	FY80 Estimate	Youth Expenditures Index	%
13.254	Drug Abuse Demonstration Programs	$ 3.61	$ .32	9
13.640	Administration for Children, Youth, and Families--Youth Research and Development	1.47	1.09	74
16.537	Urban Crime Prevention	5.50	1.38	25
13.257	Alcohol Formula Grants	54.80	2.74	5
13.420	Alcohol and Drug Abuse Education Program	3.00	3.00	100
13.252	Alcoholism Treatment and Rehabilitation/ Occupational Alcoholism Serv. Progs.	60.82	3.04	5
13.275	Drug Abuse Prevention/Education Programs	8.32	4.58	55
13.652	Administration for Children, Youth, and Families--Adoption Opportunities	5.00	5.00	100
15.144	Indian Child Welfare Act--Title II Grants	5.50	5.50	100
--	Urban Initiatives Anti-Crime Program	23.00	5.80	25
13.623	Administration for Children, Youth, and Families--Runaway Youth	11.00	10.23	93
13.535	Indian Education--Special Programs and Projects	12.50	10.00	80
15.103	Indian Soc. Svcs.--Child Welfare Assis.	13.59		90

Table II-19 (Continued)

Federal Catalog No.	Program Name	FY80 Estimate	Youth Expenditure Index	%
13.975	Adolescent Pregnancy Prevention and Services	$ 13.00	$ 13.00	100
10.661	Youth Conservation Corps--Grants to States	14.60	14.60	100
13.570	Instructional Materials and School Library Resources	171.00	171.00	100
13.628	Child Abuse and Neglect Prevention and Treatment	22.93	22.93	100
17.234	Employment and Training--Indians and Native Americans	78.87	19.72	25
15.130	Indian Education--Assistance to Schools	28.20	22.00	78
13.295	Community Mental Health Centers--Comprehensive Services Support	256.90	23.12	9
10.663	Young Adult Conservation Corps--Grants to States	62.70	27.59	44
13.492	Upward Bound	57.50	34.50	60
16.517	Juvenile Justice and Delinquencey Prevention--Special Emphasis	37.24	35.38	95

Table II-19 (Continued)

Federal Catalog No.	Program Name	FY80 Estimate	%	Youth Expenditure Index
13.431	Educationally Deprived Children in State Administered Institutions Serving Neglected or Delinquent Children	$ 37.66	100	37.66
13.534	Indian Education--Grants to Local Educational Agencies	47.28	93	43.96
72.001	The Foster Grandparent Program	46.90	98	45.96
13.645	Child Welfare Services--State Grants	56.50	99	55.94
16.516	Juvenile Justice and Delinquency Prevention--Allocation to States	61.62	100	61.62
13.429	Educationally Deprived Children--Migrants	209.00	99	206.91
17.211	Job Corps	420.21	50	210.11
10.881	Cooperative Extension Service	262.60	98	256.37
13.642	Social Services for Low Income and Public Assistance Recipients	2697.00	13	350.61
13.428	Educationally Deprived Children--Local Educational Agencies	2630.02	100	2630.02
Totals		7419.24	59%	4347.91

Source: Catalog of Federal Domestic Assistance (1980) and Survey of Federal Programs (1980).

Table II-20. DELINQUENT EXPENDITURES INDEX BASED ON FY 1980 OBLIGATIONS (In millions of dollars)

Federal Catalog No.	Program Name	FY80 Estimate	Delinquent Expenditures Index	%
13.254	Drug Abuse Demonstration Programs	$ 3.61	0.25	7
15.103	Indian Social Services--Child Welfare Assistance	13.59	0.68	5
13.534	Indian Education--Grants to Local Educational Agencies	47.28	0.95	2
72.001	The Foster Grandparent Program	46.90	2.35	5
10.881	Cooperative Extensive Service	262.00	2.62	1
15.130	Indian Education--Assistance to Schools	28.20	2.82	10
17.234	Employment and Training--Indians and Native Americans	78.87	3.94	5
16.517	Juvenile Justice and Delinquency Prevention--Special Emphasis	37.24	22.72	61
16.516	Juvenile Justice and Delinquency Prevention--Formula Grants	61.62	24.65	40
Totals		579.31	60.98	11

Source: Catalog of Federal Domestic Assistance (1980) and Survey of Federal Programs (1980).

Table II-21. INDEX OF INSTITUTIONAL SERVICES EXPENDITURES BASED ON FY 1980 OBLIGATIONS (In millions of dollars)

Federal Catalog No.	Program Name	Fiscal Year 1980 (estimate)	Institutional Expenditures Index	%
13.534	Indian Education--Grants to Local Educational Agencies	$47.28	0.48	1
13.628	Child Abuse and Neglect Prevention and Treatment	18.93	0.95	5
16.517	Juvenile Justice and Delinquency Prevention--Special Emphasis	37.24	1.86	5
13.257	Alcohol Formula Grants	54.80	27.40	5
15.103	Indian Social Services--Child Welfare Assistance	13.59	40.80	30
16.516	Juvenile Justice Delinquency Prevention--Formula Grants	61.62	61.60	10
17.234	Employment and Training--Indians and Native Americans	78.87	26.03	33
72.001	The Foster Grandparent Program	46.90	28.60	61
13.431	Educationally Deprived Children in State Admin. Institutions Serving Neglected or Delinquent Youth	37.66	37.66	100
Totals		396.88	108.56	27.3

Source: Catalog of Federal Domestic Assistance (1980) and Survey of Federal Programs (1980).

Table II-22. COMPARISON OF YOUTH EXPENDITURES INDEX, DELINQUENT EXPENDITURES INDEX, INSTITUTIONAL EXPENDITURES INDEX, AND TOTAL FY 80 OBLIGATIONS (In millions of dollars)

	Obligations	Percent of Total
Youth Expenditures Index	$4347.91	59
Total FY 80 Obligation (33 programs)	7419.08	
Delinquent Expenditures Index	60.98	11
Total FY 80 Obligations (9 programs)	579.31	
Insitutional Expenditures Index	108.56	27.3
Total FY 80 Obligation (11 programs)	396.88	

Source: Catalog of Federal Domestic Assistance (1980) and Survey of FedePrograms (1980).

Table II-23. PROGRAM OBLIGATIONS BY YEAR FOR THE PERIOD 1974-1979 (Actual) AND 1980 (Estimated)
(In millions of dollars)

Federal Catalog No.*	FY1974	FY1975	FY1976	FY1977	FY1978	FY1979	FY1980
Department of Agriculture							
10.661	$ 2.65	$ 3.62	$ 9.60	$ 15.70	$ 18.60	$ 16.20	$ 14.60
10.663	--	--	--	2.48	34.48	61.00	62.70
10.881	--	--	--	198.95	248.23	253.23	262.00
Department of Health, Education, and Welfare							
13.235	158.11	104.49	65.51	134.03	132.57	108.74	142.10
13.252	88.42	74.08	73.97	50.38	55.80	55.46	60.82
13.254	14.61	11.89	15.00	9.66	10.60	7.07	3.61
13.257	75.60	52.00	55.50	56.8	56.80	56.80	54.80
13.275	3.53	2.95	3.28	1.81	7.21	4.39	8.32
13.295	--	--	52.00	112.59	117.53	301.86	256.90
13.420	--	4.00	2.00	2.0	2.00	2.00	3.00
13.428	1445.96	1587.00	1625.36	1721.12	1926.73	2630.02	2630.02
13.429	78.33	91.95	97.09	130.91	145.76	171.41	209.00
13.431	25.45	26.82	27.32	28.84	29.42	28.73	37.66

Table II-23 (Continued)

Federal Catalog No.*	FY1974	FY1975	FY1976	FY1977	FY1978	FY1979	FY1980
13.492	$ 38.33	$ 38.33	$ 38.33	$ 41.46	$ 47.00	$ 58.83	$ 57.50
13.493	412.84	428.14	565.05	476.93	413.30	430.27	474.77
13.525	146.88	135.54	137.60	137.46	137.60	137.60	137.60
13.529	19.92	18.10	17.20	17.19	17.20	17.17	15.00
13.534	23.80	22.70	31.80	33.63	35.26	43.64	47.28
13.535	12.00	12.00	15.50	13.07	13.08	14.00	12.50
13.551	1.20	2.27	3.20	3.30	3.53	4.36	4.73
13.570	--	--	267.95	147.65	154.33	180.00	171.00
13.571	--	--	172.89	184.52	194.00	197.40	197.40
13.623	--	5.01	8.20	8.00	11.00	10.84	11.00
13.628	--	19.21	18.93	18.20	18.67	18.89	22.93
13.640	--	--	1.25	.84	.45	3.00	1.47
13.642	--	--	--	2460.44	2577.94	2818.40	2697.00
13.645	--	--	--	56.50	56.50	56.50	56.50
13.652	--	--	--	--	--	4.98	5.00
13.975	--	--	--	--	--	.74	13.00

Table II-23 (Continued)

Federal Catalog No.*	FY1974	FY1975	FY1976	FY1977	FY1978	FY1979	FY1980
Department of the Interior							
15.103	$ 6.92	$ 8.15	$ 7.81	$ 9.33	$ 11.17	$ 13.59	$ 13.59
15.130	22.08	28.35	35.52	31.45	34.64	31.70	28.20
15.144	--	--	--	--	--	--	5.50
Department of Justice							
16.516	--	10.60	11.50	43.27	63.75	61.63	61.62
16.517	--	27.37	27.95	14.01	52.57	20.99	37.24
16.537	--	--	--	--	--	--	5.50
Department of Labor							
17.211	173.87	210.38	179.53	209.50	376.46	400.75	420.21
17.232	370.00	3516.77	5902.85	8043.87	5370.46	8972.37	6996.68
17.234	--	62.33	90.07	51.31	62.44	753.10	78.87
Community Services Administration							
49.002	178.69	348.14	437.60	326.57	364.10	364.10	383.80

Table II-23 (Continued)

Federal Catalog No.*	FY1974	FY1975	FY1976	FY1977	FY1978	FY1979	FY1980
ACTION							
72.001	$ 24.93	$ 28.31	$ 31.82	$ 34.00	$ 34.90	$ 34.90	$ 46.90
Totals	$3324.12	$6880.50	$10019.28	$14827.80	$12836.08	$18346.66	$15387.52

*Program tiles are identified in Table II-1.

Source: Catalog of Federal Domestic Assistance (1974-1980).

Table II-24. PROGRAM OBLIGATIONS, DESCRIPTIVE MEASURES, 1974-1980 (In millions of dollars)

Obligations 1974-1980	Number of Programs	Minimum Obligation	Maximum Obligation	Average Obligation
1974	22	$1.20	$1446.00	$151.00
1975	28	2.27	3516.80	245.73
1976	32	1.25	5902.90	313.10
1977	36	.84	8043.90	411.80
1978	36	.44	5370.50	358.21
1979	38	.74	8972.40	464.98
1980	40	1.47	6996.70	384.34

Source: Catalog of Federal Domestic Assistance (1974-1980).

Table II-25. ANNUAL PERCENT CHANGE IN PROGRAM OBLIGATIONS, 1974-1975 TO 1979-1980

Federal Catalog No.*	% Change 1974-75	% Change 1975-76	% Change 1976-77	% Change 1977-78	% Change 1978-79	% Change 1979-80
10.661	36.48	165.34	63.54	18.47	-12.90	-9.88
10.663	--**	--	--	1291.80	76.94	2.78
10.881	--	--	--	24.77	2.02	3.30
13.235	-33.91	-37.30	104.59	-1.09	-17.98	30.68
13.752	-16.22	-.14	-31.89	10.75	-.61	9.66
13.254	-18.60	26.12	-35.59	4.13	-29.66	-49.04
13.257	-31.22	6.73	2.34	0.	0.	-3.52
13.275	-16.35	11.01	-44.78	298.51	-39.10	89.52
13.295	--	--	116.52	57.67	70.03	-14.89
13.420	--	-50.00	0.	0.	0.	50.00
13.428	9.75	2.42	5.89	11.95	36.50	0.
13.429	17.39	5.59	34.83	11.34	17.59	21.93
13.431	5.40	1.88	5.55	1.99	-2.32	30.52
13.492	-.01	.01	8.15	13.37	25.16	-2.25
13.493	3.71	31.98	-15.59	-13.34	4.10	10.34
13.525	-7.72	1.52	-.11	.11	0.	0.

Table II-25 (Continued)

Federal Catalog No.*	% Change 1974-75	% Change 1975-76	% Change 1976-77	% Change 1977-78	% Change 1978-79	% Change 1979-80
13.529	-9.10	-4.99	-.06	.06	-.20	-12.61
13.534	-4.62	40.09	5.76	4.83	23.77	8.33
13.535	0.	29.17	-15.65	.05	7.03	7.14
13.551	89.17	40.97	4.06	6.07	23.56	8.32
13.570	--	--	-44.90	4.53	16.63	-91.00
13.571	--	--	6.73	5.14	1.75	0.
13.623	--	63.61	2.46	37.53	1.42	1.44
13.628	--	1.49	3.84	2.58	1.18	.20
13.640	--	--	32.72	46.73	568.53	50.92
13.642	--	--	--	4.78	9.33	12.18
13.645	--	--	--	0.	0.	0.
13.652	--	--	--	--	--	.44
13.975	--	--	--	--	--	1656.76
15.103	17.77	4.22	19.45	19.73	21.69	0.
15.130	28.41	25.29	11.46	10.14	8.49	11.04

Table II-25 (Continued)

Federal Catalog No.	% Change 1974-75	% Change 1975-76	% Change 1976-77	% Change 1977-78	% Change 1978-79	% Change 1979-80
15.144	--	--	--	--	--	--
16.516	--	8.49	276.27	47.33	3.32	.02
16.517	--	2.15	-49.87	275.10	-60.07	77.39
16.537	--	--	--	--	--	--
17.211	21.00	-14.67	16.70	79.70	6.45	4.86
17.232	850.48	67.85	36.27	-33.24	67.07	-22.02
17.234	--	28.45	-35.87	21.62	20.60	4.74
49.002	94.83	25.70	-25.37	11.49	.11	5.29
72.001	13.58	12.39	6.86	2.65	0.	34.38

*Program titles are identified in Table II-1.
**--indicates that data are not available.

Source: Catalog of Federal Domestic Assistance (1980).

Table II-26. AVERAGE ANNUAL PERCENT CHANGE IN OBLIGATIONS, 1974-1980

Year	Number of Programs	Minimum Percent Change	Maximum Percent Change	Average Percent Change	Percent Change in U.S. Budget Outlays*
1974-75	22	-34	850	48	21
1975-76	28	-50	165	17	12
1976-77	32	-50	276	11	10
1977-78	36	-47	1292	61	12
1978-79	36	-60	569	23	10
1979-80	38	-91	1657	47	14

*U.S. Budget in Brief (1980), p. 69.

Source: Catalog of Federal Domestic Assistance (1974-1980).

Table II-27. NUMBER OF PROGRAMS THAT DECLINED, GREW, OR REMAINED CONSTANT BETWEEN 1974-1975 AND 1979-1980

	Missing	Negative Change	Positive Change (including 0)
FY 1974-1975	18	9	13
Number		40.9	59.1
Percent			
FY 1975-1976			
Number	12	7	21
Percent		25.0	75.0
FY 1976-1977			
Number	8	15	17
Percent		46.9	53.1
FY 1977-1978			
Number	4	4	32
Percent		11.1	88.9
FY 1978-1979			
Number	4	11	25
Percent		30.6	69.4
FY 1979-1980			
Number	2	12	26
Percent		31.6	68.4

Source: Catalog of Federal Domestic Assistance (1974-1980).

Table II-28. TRENDS IN OUTLAYS 1970-1979 FOR SELECTED FEDERAL PROGRAMS (In millions of dollars)

Year	Number of Program Outlays	Percent of Programs	Total Outlays	Percent of Total Outlays
1979	55	23	$17450.22	29
1978	42	18	13284.88	22
1977	36	15	12130.13	20
1976	33	14	6406.78	11
1975	27	11	3210.97	5
1974	18	8	2497.61	4
1973	16	7	2279.27	4
1972	6	3	1883.98	3
1971	4	2	94.75	<1
1970	1	<1	44.70	<1
Total	238		$59283.30	

Source: Community Services Administration.

Table II-29. TOTAL OUTLAYS BY AGENCY, 1970-1979 FOR SELECTED FEDERAL PROGRAMS (In millions of dollars)

Agency	Number of Program Outlays	Percent of Programs	Total Outlays	Percent of Total Outlay
Action	8	3	$198.53	<1
Department of Justice	11	5	278.04	1
Department of the Interior	23	10	484.72	1
Department of Agriculture	11	5	621.95	1
Community Services Administration	12	5	1753.28	3
Department of Labor	25	11	25752.97	43
Department of Health, Education, and Welfare	148	62	30193.81	51
Total	238		$59283.30	

Source: Community Services Administration.

Table II-30. TOTAL OUTLAYS BY TYPE OF ASSISTANCE 1970-1979 FOR SELECTED FEDERAL PROGRAMS (In millions of dollars)

Type of Assistance	Number of Program Outlays	Percent of Programs	Total Outlays	Percent of Total Outlays
Other Grants	2	1	$ 28.78	1
Direct Payments	10	4	73.62	1
Salaries and Expense	14	6	109.48	1
Contractual Procurements	11	5	220.35	1
Project Grants	121	51	6943.91	12
Formula Grants	80	34	51907.16	88
Total	238		$59283.30	

Source: Community Services Administration.

Table II-31. TOTAL OUTLAYS BY DEPARTMENT 1970-1979 FOR SELECTED FEDERAL PROGRAMS (In millions of dollars)

Department of Agriculture

Year	Number of Program Outlays	Total Outlays
1979	2	$296.07
1978	2	292.22
1977	1	17.39
1976	1	6.98
1975	1	3.64
1974	1	2.24
1973	1	1.64
1972	1	1.31
1971	1	.47
Total	11	$621.95

Department of Health, Education, and Welfare

Year	Number of Program Outlays	Total Outlays
1979	29	$ 7170.08
1978	26	7478.63
1977	21	3026.27
1976	20	3225.23
1975	17	2601.40
1974	14	2444.62
1973	12	2225.93
1972	5	1882.67
1971	3	94.28
1970	1	44.70
Total	148	$30193.81

Table II-31 (Continued)

Department of the Interior

Year	Number of Program Outlays	Total Outlays
1979	3	$ 92.98
1978	4	205.21
1977	5	60.78
1976	4	26.60
1975	3	36.40
1974	2	32.04
1973	2	30.71
Total	23	$ 484.72

Department of Justice

Year	Number of Program Outlays	Total Outlays
1979	5	$ 82.17
1978	2	106.66
1977	2	48.30
1976	2	40.91
Total	11	$278.04

Table II-31 (Continued)

Departmeht of Labor

Year	Number of Program Outlays	Total Outlays
1979	12	$ 9394.92
1978	5	4794.91
1977	4	8623.26
1976	3	2772.46
1975	1	167.42
Total	25	$25752.97

ACTION

Year	Number of Program Outlays	Total Outlays
1979	2	$ 34.93
1978	1	34.88
1977	1	33.50
1976	1	27.12
1975	1	28.40
1974	1	18.71
1973	1	20.99
Total	8	$198.53

Table II-31 (Continued)

Community Services Administration

Year	Number of Program Outlays	Total Outlays
1979	2	$ 379.08
1978	2	372.37
1977	2	320.64
1976	2	307.49
1975	4	373.71
Total	12	$1753.28

Source: Community Services Administration.

Table II-32. TOTAL OUTLAYS BY TYPE OF ASSISTANCE 1970-1979 FOR SELECTED FEDERAL PROGRAMS (In millions of dollars)

Formula Grants

Year	No. of Program Outlays	Total Outlays
1979	19	15765.71
1978	15	11549.10
1977	12	11029.30
1976	8	5353.88
1975	8	2428.00
1974	6	2028.51
1973	5	1885.94
1972	4	1854.24
1971	2	65.82
1970	1	44.70
Total	80	51907.16

Project Grants

Year	No. of Program Outlays	Total Outlays
1979	30	1642.50
1978	21	1507.53
1977	18	1057.27
1976	19	1117.28
1975	12	716.80
1974	10	459.94
1973	9	385.73
1972	1	28.50
1971	1	28.50
Total	121	6943.91

Figure II-7. Total Outlays by Department 1970-1979 for Selected Federal Programs (in $1000)

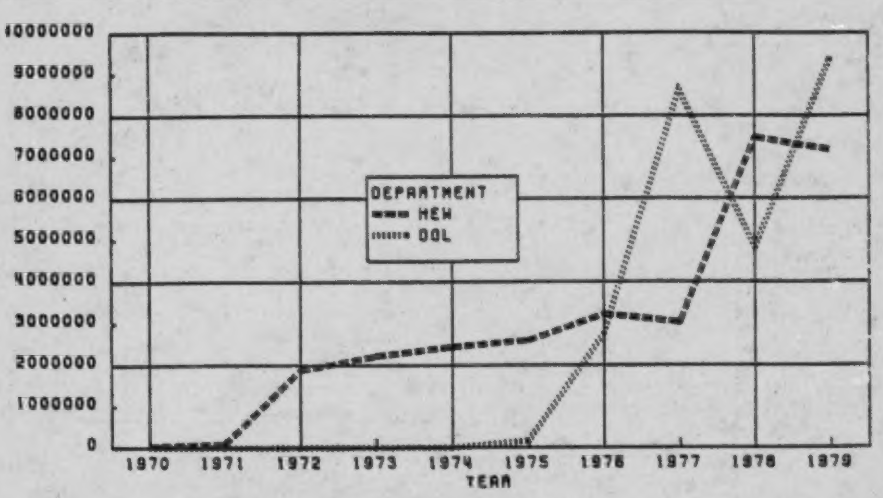


Figure II-8. Total Outlays by Department 1970-1979 for Selected Federal Programs (in $1000)

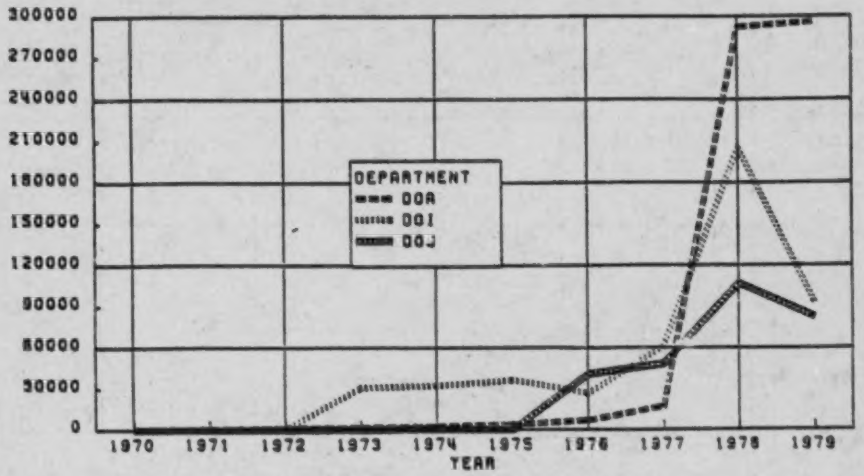


Figure II-9. Total Outlays by Department 1970-1979
for Selected Federal Programs (in $1000)

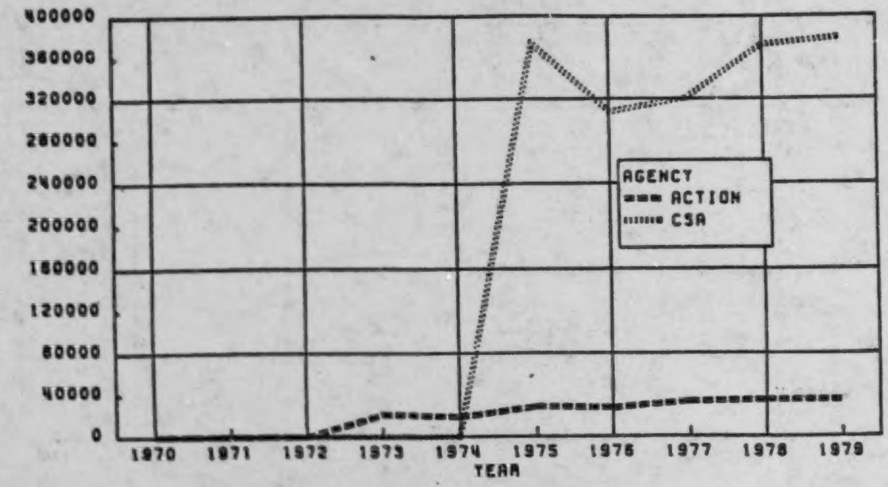


Figure II-10. Total Outlays by Type of Assistance 1970-1979
for Selected Federal Programs (in $1000)

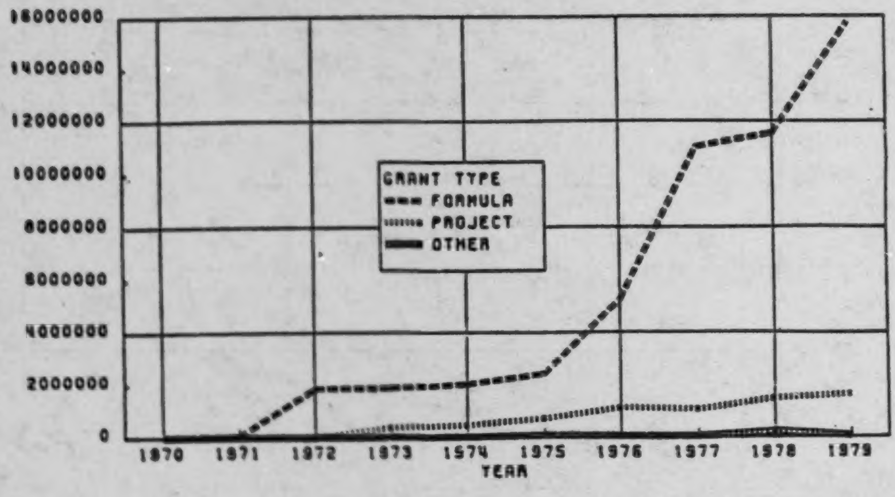


Table II-33. TOTAL OUTLAYS BY TYPE OF ASSISTANCE AND STATE FOR SELECTED FEDERAL PROGRAMS, 1979

	Formula		Project		Other		Total	
	Amount*	%	Amount*	%	Amount*	%	Amount*	%
Ala.	$ 263.40	1.72	$ 25.84	2.03	$ .32	.76	$ 289.55	1.74
Alaska	58.45	.38	4.60	.36	.67	1.60	63.70	.38
Arizona	203.63	1.33	17.69	1.39	10.63	24.02	231.49	1.39
Ark.	117.64	1.16	17.67	1.39	.24	.57	195.56	1.17
Calif.	1669.00	10.89	116.87	9.16	1.90	4.55	11787.79	10.74
Colo.	154.05	1.00	16.75	1.31	1.55	3.70	172.35	1.04
Conn.	209.39	1.37	15.00	1.18	.0	.0	224.38	1.35
Del.	45.13	.29	2.00	.24	.0	.0	48.12	.29
D.C.	192.12	1.25	29.04	2.28	10.12	24.15	231.27	1.39
Florida	619.94	4.04	50.15	3.93	.17	.41	670.27	4.03
Georgia	350.14	2.28	34.22	2.68	.45	1.08	384.81	2.31
Hawaii	69.46	.45	7.50	.59	.0	.0	76.96	.46
Idaho	56.73	.37	5.04	.39	.65	1.55	62.42	.37
Ill.	745.72	4.86	52.60	4.12	.41	.97	798.73	4.80
Indiana	292.74	1.91	34.32	2.69	.20	.47	327.25	1.97
Iowa	138.12	.90	10.35	.81	.0	.0	148.47	.89
Kansas	103.16	.67	14.66	1.15	.0	.0	117.83	.71
Kentucky	227.14	1.48	17.59	1.38	.24	.57	244.93	1.47
Louisiana	304.54	1.99	21.63	1.70	.24	.57	326.41	1.96
Maine	76.16	.50	8.35	.65	.08	.20	84.59	.51
Maryland	274.38	1.79	40.18	3.15	.21	.50	314.76	1.89
Mass.	462.43	3.02	39.61	3.11	2.00	4.77	504.04	3.03

Table II-33 (Continued)

	Formula		Project		Other		Total	
	Amount*	%	Amount*	%	Amount*	%	Amount*	%
Michigan	$ 692.65	4.52	$ 43.23	3.39	$ .79	1.87	$ 736.66	4.43
Minn.	229.38	1.50	12.30	.96	1.00	2.38	242.68	1.46
Miss.	207.48	1.35	20.18	1.58	.24	.56	227.90	1.37
Missouri	312.63	2.04	21.46	1.68	.16	.39	334.26	2.01
Montana	62.72	.41	6.89	.54	1.19	2.85	70.80	.43
Nebraska	76.61	.50	9.19	.72	.085	.20	85.89	.52
Nevada	44.65	.29	5.67	.44	.52	1.23	50.83	.31
N. Hamp.	41.01	.27	7.90	.62	.13	.30	49.03	.29
N. Jersey	579.03	3.89	44.31	3.47	.032	.08	641.37	3.85
N. Mexico	114.97	.75	14.84	1.16	1.38	3.29	131.18	.79
New York	1561.67	10.19	117.86	9.24	.22	.53	1679.75	10.09
N. Carolina	347.14	2.26	34.38	2.70	.42	1.01	381.94	2.29
N. Dakota	43.27	.28	4.14	.32	.75	1.79	48.16	.29
Ohio	631.81	4.12	53.02	4.16	.12	.28	684.94	4.11
Oklahoma	178.12	1.16	19.10	1.50	.20	.05	197.24	1.18
Oregon	176.42	1.15	10.33	.81	.53	1.26	187.28	1.13
Penn.	824.21	5.38	59.51	4.67	.27	.63	883.98	5.31
Rhode Island	75.80	.49	7.67	.60	.0	.0	83.47	.50
S. Carolina	215.59	1.41	19.19	1.50	.15	.35	234.93	1.41
S. Dakota	45.03	.29	6.15	.48	.95	2.26	52.13	.31
Tenn.	260.47	1.70	20.79	1.63	.36	.87	281.62	1.69
Texas	800.71	5.22	65.06	5.10	.48	1.14	866.25	5.20

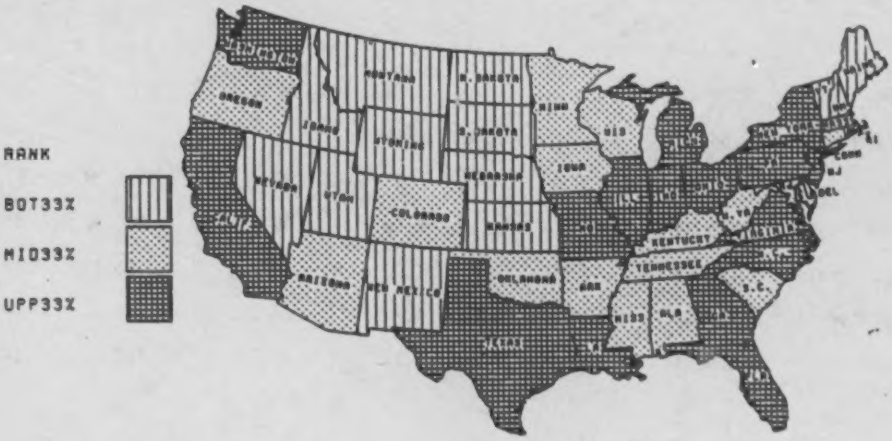
Table II-33 (Continued)

	Formula		Project		Other		Total	
	Amount*	%	Amount*	%	Amount*	%	Amount*	%
Utah	$ 62.85	.41	$ 8.10	.63	$ .52	1.25	$ 71.47	.43
Vermont	34.68	.23	5.56	.44	.092	.22	40.33	.24
Virginia	287.60	1.88	23.36	1.83	.37	.89	311.34	1.87
Washington	79.85	1.82	21/39	1.68	.49	1.18	300.92	1.81
W. Virginia	147.66	.96	12.80	1.00	.14	.33	160.59	.96
Wisconsin	264.80	1.73	16.22	1.27	.64	1.53	281.66	1.69
Wyoming	20.11	.13	2.36	.19	.35	.83	22.83	.14

*In millions of dollars

Source: Community Services Administration.

Figure II-11. Map of Formula Grant Outlays for Selected Federal Programs by State, 1979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UTAH
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CALIF
ARIZONA
NEW MEXICO
OKLAHOMA
TEXAS
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IOWA
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Figure II-12. Map of Project Outlays for Selected Federal Programs by State, 1979

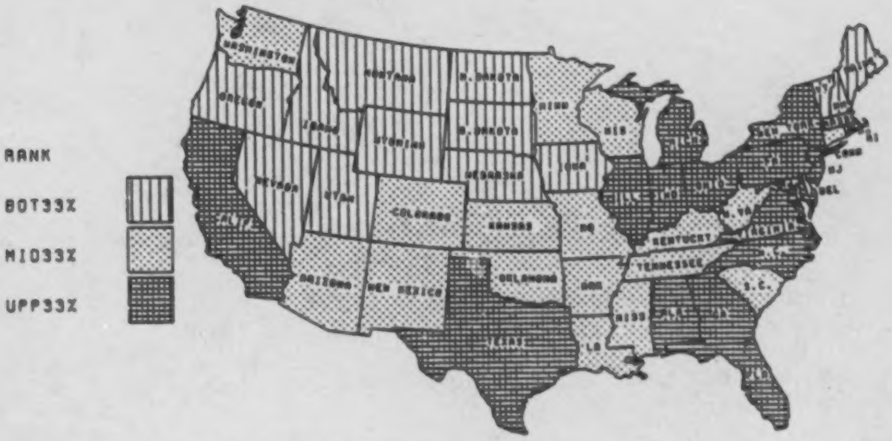
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Figure II-13. Map of Total Outlays for Selected Federal Programs by State, 1979

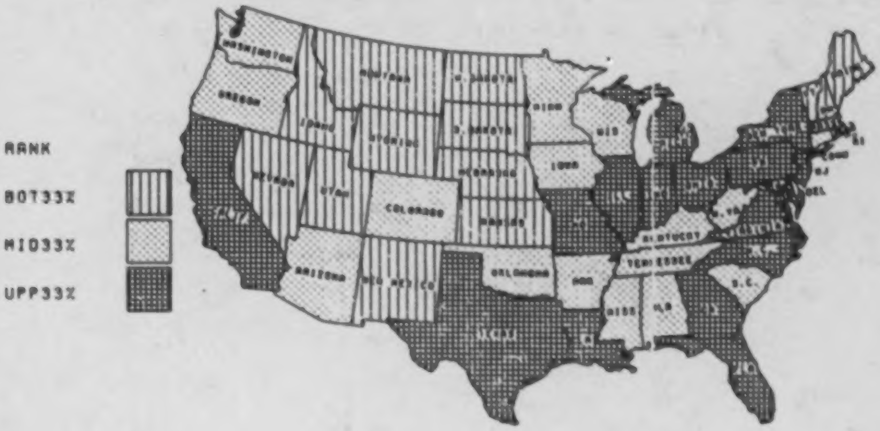
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Table II-34. PER CAPITA OUTLAYS BY TYPE OF ASSISTANCE AND STATE FOR SELECTED FEDERAL PROGRAMS, 1979

	Formula	Project	Other	Total
Alabama	$ 69.88	$ 6.85	$ 0.08	$ 76.82
Alaska	143.97	11.28	1.65	156.89
Arizona	83.11	7.22	4.11	94.44
Ark.	81.49	8.11	0.11	89.70
Calif.	73.54	5.15	0.08	78.78
Colo.	55.57	6.04	0.56	62.17
Conn.	67.22	4.81	0.00	72.03
Delaware	77.54	5.15	0.00	82.69
D.C.	292.86	44.27	15.42	352.55
Florida	69.97	5.66	0.02	75.65
Georgia	68.43	6.69	0.09	75.20
Hawaii	75.91	8.20	0.00	84.11
Idaho	62.68	5.57	0.72	68.97
Ill.	66.41	4.68	0.04	71.13
Indiana	54.21	6.35	0.04	60.60
Iowa	47.60	3.57	0.00	51.16
Kansas	43.18	6.14	0.00	49.32
Kentucky	64.40	4.98	0.07	69.45
Louisiana	75.79	5.38	0.06	81.24
Maine	69.42	7.61	0.07	77.11
Maryland	66.15	9.69	0.05	75.88
Mass.	80.16	6.87	0.35	87.37

Table II-34 (Continued)

	Formula	Project	Other	Total
Michigan	$ 75.23	$ 4.70	$ 0.09	$80.01
Minn.	56.50	3.03	0.25	59.77
Miss.	85.42	8.31	0.10	93.82
Missouri	64.23	4.41	0.03	68.68
Montana	79.79	8.77	1.52	90.08
Nebraska	48.68	5.84	0.05	54.57
Nevada	63.60	8.07	0.74	72.41
N. Hamp.	46.23	8.90	0.14	55.28
N. Jersey	81.43	6.04	0.00	87.48
N. Mex.	92.64	11.96	1.11	105.71
New York	88.49	6.68	0.01	95.18
N. Car.	61.92	6.13	0.08	68.13
N. Dak.	65.86	6.31	1.14	73.31
Ohio	58.88	4.94	0.01	63.83
Okla.	61.59	6.60	0.01	68.20
Oregon	69.81	4.09	0.21	74.11
Penn.	70.26	5.07	0.02	75.35
Rhode Is.	81.59	8.26	0.00	89.85
S. Car.	73.53	6.55	0.05	80.13
S. Dak.	65.36	8.93	1.38	75.66
Tenn.	59.47	4.75	0.08	64.30
Texas	59.84	4.86	0.04	64.74
Utah	45.98	5.92	0.38	52.29

Table II-34 (Continued)

	Formula	Project	Other	Total
Vermont	70.34	11.27	0.19	81.80
Virginia	55.77	4.53	0.07	60.37
Wash.	71.08	5.44	0.13	76.65
W. Va.	78.62	6.82	0.07	85.51
Wisc.	27.24	1.67	0.07	28.98
Wyoming	44.70	5.26	0.77	50.73

Source: Community Services Administration.

Table II-35. AVERAGE PER CAPITA OUTLAYS BY TYPE OF ASSISTANCE BY REGION, 1979
(In millions of dollars)

	Average Per Capita Outlay			
Region	Formula	Project	Other	Total
Northeast	$7.28	$0.73	$0.09	$8.02
North Central	5.61	0.51	0.26	6.14
South	8.25	0.85	0.96	9.20
West	7.43	0.72	0.92	8.21

Source: Community Services Administration.

Figure II-14. Map of Per Capita Formula Grant Outlays for Selected Federal Programs by State, 1979

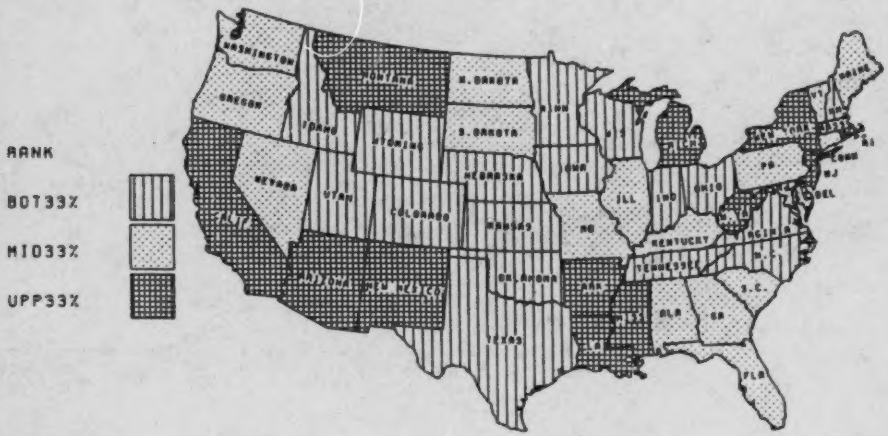
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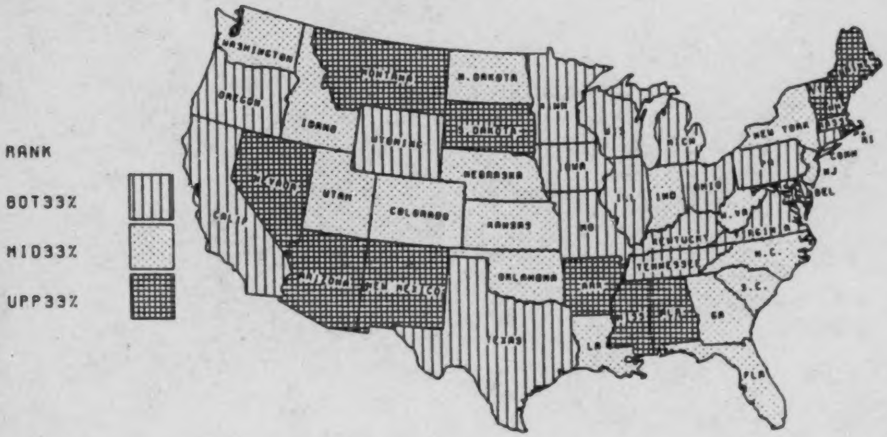
Figure II-15. Map of Per Capita Project Grant Outlays for Selected Federal Programs by State, 1979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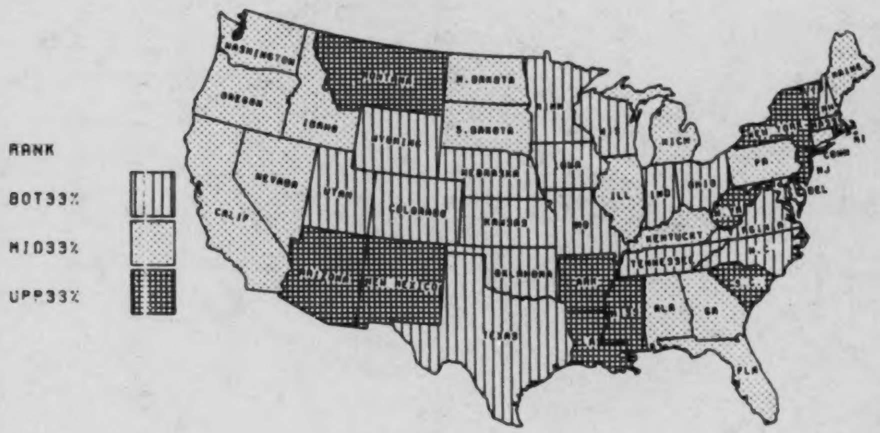
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Figure II-16. Map of Per Capita Total Outlays for Selected Federal Programs by State, 1979

Table II-36. RANKING OF TOTAL AND PER CAPITA OUTLAYS BY STATE FOR SELECTED FEDERAL PROGRAMS, 1979

	Total Outlays	Per Capita Outlays
Alabama	33	31
Alaska	9	50
Arizona	27	47
Arkansas	22	43
California	51	33
Colorado	20	11
Connecticut	24	21
Delaware	3	38
Washington, D.C.	26	51
Florida	44	27
Georgia	41	25
Hawaii	12	39
Idaho	8	18
Illinois	47	20
Indiana	38	10
Iowa	18	4
Kansas	16	2
Kentucky	30	19
Louisiana	37	36
Maine	14	32
Maryland	36	29
Massachusetts	42	41

Table II-36 (Continued)

	Total Outlays	Per Capita Outlays
Michigan	46	34
Minnesota	29	8
Mississippi	25	46
Missouri	39	17
Montana	10	45
Nebraska	15	6
Nevada	6	22
New Hampshire	5	7
New Jersey	43	42
New Mexico	17	49
New York	50	48
North Carolina	40	15
North Dakota	4	23
Ohio	45	12
Oklahoma	23	16
Oregon	21	24
Pennsylvania	49	26
Rhode Island	13	44
South Carolina	28	35
South Dakota	7	28
Tennessee	31	13
Texas	48	14
Utah	11	5
Vermont	2	37
Virginia	35	9
Washington	34	30
West Virginia	19	40
Wisconsin	32	1
Wyoming	1	3

Source: Community Services Administration.

Table II-37. RELATIONSHIP BETWEEN TOTAL OUTLAYS BY TYPE OF ASSISTANCE AND SELECTED INDICATORS OF NEED, 1979

	Population 1979	Unemployment Rate 1979	Number of Juveniles in Correctional Institutions 1978	Children in Need of Supervision 1975	Crime Index 1979
Formula	.9660	.2466	.8581	.7949	.2440
Project	.9413	.2392	.8486	.7747	.2130
Total	.9651	.2469	.8582	.7946	.2416

RESPONSES OF ALFRED S. REGNERY TO QUESTIONS OF SENATOR JOSEPH R. BIDEN, JR.

Question. Continuation of juvenile justice program.—All of the budget proposals submitted by this administration have attempted to eliminate the Juvenile Justice Program. Congress has blocked this action and since the President is now sending us your nomination it would appear that he believes we will again block the elimination proposal and therefore wants a director in place.

A. What is your commitment to continuing this program?

B. During your consideration for nomination by the White House were you informed that the administration was proposing to eliminate the program?

C. Did you accept the nomination with the intent to help dismantle the program per the desires of the Justice Department and the President?

D. Considering reauthorization, what new initiatives are you planning for fiscal year 1984? Are they in writing?

E. What is your position on reauthorization? At what level should Juvenile Justice Delinquency Prevention Act be funded? Where should the allocations be for block grants, discretionary grants and research?

Answer. When I accepted the nomination, no requirements that I help to dismantle the program were discussed or made. I am convinced that a special federal juvenile justice program is needed and, if confirmed, I shall carry out this program as mandated. However, should the Executive and Congress agree to change or end the program, that mandate will also be implemented.

The funding level of this program depends upon the goals and activities that are set out by the Congress. The former must be appropriate to the latter; however, I am also convinced that for many social problems, such as some that are at the root of juvenile delinquency, the addition of substantial funds to government efforts will not be effective. There are important functions that can be performed by the federal government, but these are not always enhanced by large injections of funds.

No new initiatives for fiscal year 1984 over those of fiscal year 1983 have been planned.

Question. Organizational structure of the Office of Juvenile Justice Delinquency Prevention.—When the Congress reorganized the federal criminal justice assistance agencies in 1980 it had some specific goals in mind for separating the functions of the various agencies. There is currently an administration proposal included in Title VIII of Senate Bill 829, entitled "Justice Assistance Act of 1983." The proposal would consolidate under the direction of an Assistant Attorney General the functions of the National Institute of Justice, Bureau of Justice Statistics Bureau of Justice Programs and eventually if still in operation, the Office of Juvenile Justice and Delinquency Preventi[illegible]

I am interested in your position on this reorganization should the Justice Assistance Act of 1983 be enacted.

A. Do you believe the Office of Juvenile Justice and Delinquency Prevention should remain a separate entity answerable directly to the Attorney General?

B. Should the director of the Office of Juvenile Justice and Delinquency Prevention be downgraded to an Attorney General appointment instead of a Presidential appointment?

C. Are you prepared to accept this demotion and willing to give up final grant making authority for the Office of Juvenile Justice and Delinquency Prevention, should you be confirmed and this new proposal enacted?

D. Should the Office of Juvenile Justice and Delinquency Prevention continue to carry out research in juvenile delinquency and prevention or could that function be transferred to the National Institute of Justice or another federal agency?

E. What is your current relationship with the directors of the Office of Justice Assistance Research and Statistics, National Institute of Justice and Bureau of Justice Statistics? Explain your day to day working relationship with each.

F. Would you support the elimination of the Juvenile Justice Delinquency Prevention Advisory Board if the Office of Juvenile Justice Delinquency Prevention is included in this news organizational structure?

Answer. Juvenile justice should continue to be the responsibility of an organizational unit of the Department of Justice. At the same time, it is important that the work of the juvenile justice agency be coordinated closely with that of the research, statistics, and action agencies concerned with criminal justice; only by all such agencies working closely together can the federal government effectively assist states and communities to deal with the problems of crime and justice.

During my period as Acting Administrator, I have enjoyed a close relationship with my colleagues who head the associated agencies which I intend to continue after confirmation. Whether the Administrator is appointed by the President, allowing specific Senate advice and consent, or by the Attorney General, the office is and should remain an integral part of the Department of Justice under the leadership of the Attorney General; only thus can it continue to be effective.

Question. Juvenile Justice has accomplished its mission. 1. What is the basis for your statements that the goals of the Juvenile Justice and Delinquency Prevention (JJDP) Act have been met by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) considering the recent General Accounting Office report entitled, "Improved Federal Efforts Needed to Change Juvenile Detention Practices"? That report shows that:

(a) Deinstitutionalization of status offenders has gained 100 percent compliance in only 34 states.

(b) Only 29 states are in compliance with 223(a)(13) of the Act calling for the Separation of juveniles from adult Offenders.

(c) Five states are not even participating with Juvenile Justice Delinquency Prevention Act.

(d) Removal of children from adult jails has yet to be realized with 479,000 youth detained in adult jails in 1980.

(e) Only one state, Pennsylvania, has been exempt from annual compliance report and monitoring requirements.

2. Even though states are supposed to be in compliance with jail removal requirements by 1985, there doesn't seem to be much emphasis by the Office of Juvenile Justice and Delinquency Prevention on this subject. Why not?

3. How do you explain the Office of Juvenile Justice and Delinquency Prevention's redirection from emphasis on juvenile justice and delinquency prevention to a focus of detection, apprehension and prosecution? How will you impact on the majority of kids not covered by your serious violent offender emphasis but who appear in need of services based on provisions in the Act?

4. In your newsletter "Justice Assistance News" (September 1982–Volume 3, No. 7) the front page article entitled "delinquency behavior spawned by Traditions of Crime" describes ways to prevent delinquency. Conclusions reached by two reports pubished by the National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) provide guides to favorably prevent juvenile delinquency. Why then is your office apparently rejecting any involvement in an area so crucial to juvenile justice and legislatively mandated by Congress when there is Office of Juvenile Justice and Delinquency Prevention, (OJJDP) sponsored research that strongly suggests a potential for success?

5. Your emphasis on violent juvenile offenders seems to duplicate the envisioned role of the new justice assistance proposals which also includes a program for violent and serious juvenile offenders? Why do you want to change the focus of the Office of Juvenile Justice and Delinquency Prevention when it is clear that this will be the key element in the new program?

Answer. a. Based upon a report dated December 2, 1982, which identified the state's level of deinstitutionalization, forty-three of the fifty-two participating states and territories have participated for five or more years and are thus required to achieve full compliance of Secion 223(a)(12)(A) of the Act to maintain eligibility for Fiscal Year 1983 Formula Grant funds. Of the forty-three states, thirty-four are in full compliance pursuant to the policy and criteria for full compliance with the de minimis exceptions. Eight of the fifty-two participating states must achieve substantial or better compliance to be eligible for Fiscal Year 1983 formula funds and one must be in compliance to be eligible for Fiscal Year 1983 formula funds and one must demonstrate progress to maintain eligibility for Fiscal Year 1983 funds. (See attached "Summary of Participation in the JJDP Act and Compliance with Sections 223(a)(12) and (13), dated December 2, 1982.

1b. There is no statutorily established time frame for separation. The states established their own date for compliance, based upon their constraints; these dates were reviewed by OJJDP before the date was firmly established, with the latest date being 1985. (See attached memorandum from Wood to West, dated April 5, 1983.)

1c. True. The states participate at the discretion of the governor. The five have never participated. OJJDP is working with governors and other people in those states to encourage them to participate.

1d. The removal requirement was an amendment to the JJDP Act in 1980, which means we have had a relatively short period of time to achieve complete deinstitutionalization. The states have until 1985 for substantial compliance to the Act and 1987 for full compliance.

1e. In the December 31, 1981, Federal Register, we list the criteria for the states to follow in submitting their written request for exception from the annual monitoring report requirements. Pennsylvania is the only state that has met the statutory and regulatory requirements of the Act, Section (223)(15.

2. OJJDP currently has a contract with Community Research Center, University of Illinois to provide technical assistance in the area of jail removal. The award was made in September, 1981, for an eighteen-month period, in the amount of $875,000. This contract is currently under review for continuing these efforts for the next eighteen months.

OJJD provides intense assistance to states and localities to assist them in their efforts in jail removal. Since 1978, OJJDP has developed and disseminated fifteen publications on the subject of jail removal.

3. I don't believe that there has been a redirection away from delinquency prevention or juvenile justice. There has been a realization that the way we achieve our goals or aims may need to be changed somewhat from what it has been in the past. We are still concerned with delinquency prevention, but believe that primary delinquency prevention—that body of activities that impact upon the general youth population—is best addressed by those agencies that have primary responsibility for addressing the needs of this population. Further, we feel and indeed recognize that the juvenile justice system of today is different than it was ten or even five years ago and that if we are to be a truly effective organization, we are going to have to take those bold steps necessary to meet our changing times. Further, it should be noted that our program is a demonstration one. It was never intended to continue programs merely because they were considered to be good programs. As an office, we feel it is our responsibility to examine the contemporary problems of the day and to develop programs which address those problems. While we are doing this by addressing the problems of the serious and violent juvenile offender, we are not telling the states and localities that they cannot or should not continue to improve their juvenile justice systems. Much of the knowledge on improvement of the juvenile justice system is already available due to past research and demonstration programs of the office. This knowledge can be easily transferred to the states; we are not placing any restrictions on this transfer.

We will put our resources where they are needed. Statistics for 1979 show that juveniles up to 18 years of age accounted for about 20 percent of all violent crime arrests, 44 percent of all serious property crime arrests, and 39 percent of all overall serious crime arrests. Yet these juveniles aged 10 to 17 constitute 13.6 percent of the total population. It is clear that these youtn have to be a major focus of the office. It should be noted that while these youth are a major focus, they are not the only focus. The office still intends to service the other youth who are in or are about to enter the juvenile justice system. These youth will be served by the other programs operated by the various functional entities of the office, including, but not limited to, the Coordinating Council. The formula grants program—which constitutes a major portion of the office's budget—will continue to serve all youth, not only those considered as being serious or violent. No matter where the office's focus is, it should be recognized that because of the magnitude of the problem and because crime issues fall primarily under the magnitude of state and local government, regardless of what the federal government or OJJDP does, we will never fully address the needs of all youth, nor should we.

4. The reports you reference state that the key factor in preventing juvenile delinquency is to get families, schools, peer groups, youth gangs, and social organizations in providing healthier social development opportunities for young people. While we do not disagree with this outlook, we do not believe that it is the role of OJJDP to do these things. Impacting the families, schools, peer groups, communities, labor organizations, etc., are beyond the scope of the office. We feel that these groups are best impacted through an organization like the Coordinating Council that have primary responsibility for these groups.

5. Currently, there is no justice assistance legislation that addresses the needs of violent and serious juvenile offenders. So there is no duplication. The JJDP Act, specifically the 1980 amendments, addresses the serious juvenile offender; therefore, the Office of Juvenile Justice and Deliquency Prevention should address this issue.

Question. Juvenile crime and drug program.—You recently announced the funding of a program to suppress juvenile crime and drug abuse. I understand this program is to be modeled after the Intergrated Criminal Apprehension Program model tested by the old LEAA program. I have several questions about this grant.

A. Why did you decide to model this program after the Intergrated Criminal Apperhension Program model?

B. Are you familiar with any evaluation studies by the National Institute of Justice or other agencies which justify the use of the Integrated Crime Apprehension Program as a model for this program?

C. Explain the background and procedures you followed in proposing this test program design.

Were all application notification and submission procedures followed in awarding this grant?

Why wasn't there a notice in the Federal Register 30-60 days before the award?

What award selection criteria was in writing before the award process began and explain the procedures used for making the award decisions?

Would you say procedures in awarding these grants differ in any way with past or present procedures used in awarding a Office of Juvenile Justice Delinquency Prevention (OJJDP) grants?

Could you explain how these procedures were different and why the procedures were different?

Is it true that some State Planning Agencies weren't even notified that citites in their state received an award for this program before the press release sent-out on February 13, 1982 by the Department of Justice?

Is this an example of the procedures you intend to use for future grant awards?

Answer. A. The Integrated Criminal Apperhension Program (ICAP) has been acknowledged by Congress and the LEAA administration as a model law enforcement process. ICAP has also been designated as one of the lead law enforcement programs for the new legislation.

B. Yes. There were 110 grants given out in the course of five years of ICAP capacity building. There are on file evaluations of each and every grant provided by LEAA of this program. National Criminal Justice Reference Service (NCJRS) has on file all the evaluations and final reports. It is a requirement of all but four of these ICAP grants to have a third-party evaluator as part of the program development.

C. The program design was at the behest of Acting Administrator Charles A. Lauer, who, in response to a request from a member of the National Advisory Committee (NAC), asked what the OJJDP could do relative to a law enforcement Serious Habitual Offender Drug-Involved (SHODI). This was a test research demonstration program which does not require announcement in the Federal Register. The program office followed the instructions of the then Acting administrator and the Office of General Counsel relative to this matter.

The program office originally set up a test research demonstration program design using three cities. Subsequent to that, the Acting Administrator's office requested that the three cities be expanded to five and that geographic and agency-size distribution be part of the criteria for selection. To that end, two large agencies having 1,000 or more personnel, representing city populations of 500,000 or more, and a geographic distribution of east coast and west coast cities were selected. Two small agencies from the east and west coast were selected having personnel of less than 200, and one agency mid-size having more than 300 personnel was selected from mid-continent. All agencies that were selected were selected on the basis of having a long operational experience and funding assistance for the ICAP and Career Criminal Programs.

The procedures followed were the procedures followed on all programs in which testing, research, and demonstration programs were the object of the initiative.

The procedures used were not different from the procedures used to initiate national test, research and demonstration programs.

Every agency that was contacted was advised to contact the cognizant state planning agency to advise of the possibility that these agencies might be selected for a national test, research, and development program. The agencies were also requested not to advise of any funding commitments until an on-site assessment had been made to validate the fact that certain operational ingredients to the program were still in place and operable, to wit, crime analysis operations resource, investigation management, information management, operations were all in place and operable in order to facilitate the new test, demonstration, and research program.

No. Future grant awards will be announced in the Federal Register providing the test, research, and demonstration program appears to be feasible.

Question. Department of Justice and Office of Juvenile Justice and Delinquency Prevention.—You told the National Advisory Committee that OOJJDP must recognize that it is part of the Department of Justice with the same mission as the Department of Justice, namely, apprehension and prosecution of offenders. You have stated that delinquency prevention, one of the major purposes of Office of Juvenile Justice Delinquency Prevention, belongs in other departments.

(a) Should we conclude that the Department of Justice is unwilling to administer the Juvenile Justice Delinquency Prevention Act?

(b) Should we conclude the Office of Juvenile Justice Delinquency Prevention should be moved to another department more agreeable to its statutory aims?

Answer. (a) No. The Department of Justice has assumed full responsibility for administering and implementing the Juvenile Justice and Delinquency Prevention Act since its passage in 1974. The achievement of many of the mandates of the Act, such as deinstitutionalization of status offenders, demonstrates the Department's commitment to the Act and its goals. The legislative history of the JJDP Act of 1974 sets forth the debate concerning the administration of the JJDP Act. It was the consensus of Congress that the Law Enforcement Assistance Administration was the most appropriate agency to be the focal point for the federal juvenile delinquency efforts. The success of the Act under the Department's jurisdiction substantiates Congress' decision to place the program within the Department of Justice. The Department continues to be willing to administer and implement the Act.

(b) No. It should not be concluded that OJJDP should be moved to another department more agreeable to its statutory aims. I feel that the Office has been very successful in meeting its various goals. I must stress the term varies as the JJDP Act does not have one specific aim or goal. It has been stated that three of the major aims of the Office are deinstitutionalization of status offenders, separation of juveniles and jail removal. These are three areas that the Office has worked at very hard over the past few years and the progress we have made is surely indicative of the hard work. However, we recognize that there is still more work to be done in these areas and will continue that work as well as working on some of the other aims or purposes or goals of the Act. We realize that when the JJDP Act was reauthorized in 1980, Congress added an emphasis on the serious and violent juvenile offender. This is another aim of the Act that we will expand our focus.

Question. Delinquency prevention and schools.—In the Juvenile Justice Delinquency Prevention Act, the Congress stressed the importance of delinquency prevention and of the part of schools in delinquency prevention. While the preponderance of evidence is that schools exert great influence on delinquency, delinquency prevention has taken and probably will take a back seat to educators' many other important concerns, unless there is vigorous leadership.

(a) Doesn't the situation call for substantial direct attention by Office of Juvenile Justice Delinquency Prevention to school-based delinquency prevention programs?

(b) The more the matter is studied, the more it appears that educators and those interested in delinquency prevention can agree on school improvements which address both academic achievement and delinquency prevention. Why would the prospect of a powerful alliance between educators and persons concerned with delinquency be construed as a reason for Office of Juvenile Justice Delinquency Prevention to reduce its direct involvement in school-based delinquency prevention options?

(c) Shouldn't Office of Juvenile Justice increase its direct activities in this area?

Answer. OJJDP has supported several major discretionary programs which include a focus on delinquency prevention in the schools: Law-Related Education Program, Alternative Education Program, and the Prevention Research and Development Program. Each of these programs is being evaluated.

In addition, it is estimated that approximately $7 million of OJJDP fiscal year 1982 formula grant funds were used to support delinquency prevention programs, including school-based prevention efforts. Under the states' initiative, twenty-seven states received technical assistance to implement statewide prevention programs many of which included school-based components. The Law-Related Education program is being continued in fiscal year 1983 to demonstrate institutionalization in three states.

OJJDP-sponsored nationwide assessments of school-based prevention programs identified promising strategies. These strategies have been implemented through the major discretionary programs listed above. The preliminary results of the evaluations of these programs are favorable.

The most efficient use of limited OJJDP funds is to develop and disseminate information on effective school-based prevention strategies. The Office can use this information to provide guidance to federal, state and local agencies which have education as their primary responsibility.

Question. Federal Coordinating Council.—You have stated that delinquency prevention can be addressed through the Federal Coordinating Council on Juvenile Justice and Delinquency Prevention.

(a) What past performance of the Council would lead you to believe that it is capable of producing these results?

(b) What will you do that others before you have not done to get results through the Council?

(c) What makes it plausible that responsibility for a substantial delinquency prevention program can be left to the Council?

Answer. (a) My assessment of the capabilities of the Coordinating Council is not based upon any particular thing that the Council has done in the past, as it is my understanding that the Council really has not done that much, as much as my understanding of its potential and my corresponding managerial capabilities to make the Council reach its potential. As you are aware, the statute gives the Council rather broad responsibilities as well as broad authority. That authority was never exercised in the past. The exact reason this authority was never exercised is unknown; however, I can assure you that I will exercise the authority granted me in the statute and with its authority, I believe we will be able to make the Council a truly effective body as originally envisioned by Congress.

(b) One of the major things that I will do to get results that was not done in the past is meet with the persons at the Assistant Secretary level to discuss what needs to be done and to get the persons at this level interested in doing something in the juvenile area. In the past, almost all contacts with other agencies were made solely at the formal Coordinating Council meetings. These meetings were invariably not attended by those persons who had decisionmaking authority for their particular agency. As a result, we found that we had a lot of meetings, but we never had anyone who could make decisions.

(c) There are several things which make it plausible to have the Coordinating Council responsible for a major portion of the delinquency prevention efforts. First, it should be noted that OJJDP is not withdrawing entirely from the area of delinquency prevention. We still plan to collect data on delinquency prevention, we still plan to do some research, we still plan to have our formula grant funds be used for delinquency prevention programs, and we still plan to put some of the Office's Coordinating Council funds into delinquency prevention. What the Council will be doing is concentrating its efforts on primary delinquency prevention. This is in keeping with the evaluation results conducted by National Council on Crime and Delinquency on the Office's Delinquency Prevention Program. The evaluation stated, "Primary prevention is too vast a goal for OJJDP to accomplish via its own direct funding. OJJDP should organize its primary prevention program around the concentration of federal effort role set forth in the legislation." We have reviewed the recommendation made by the National Council on Crime and Delinquency (NCCD) and find that it has merit and intend to implement it. The Council agencies fund approximately twenty to thirty programs totalling several billion dollars which conceivably could be used for delinquency prevention efforts. We are in the process of assessing specifically what these programs are. After the assessment is complete we will determine how these programs can better impact delinquency prevention efforts of communities. The Office will maintain some role in secondary and tertiary prevention efforts.

Question. Qualifications.—Your resume indicates that you have worked briefly in publishing, in a private law practice, in the Administrative Practice Subcommittee of the Judiciary Committee and in land and natural resources law at the Department of Justice.

(a) How does that experience qualify you to head the Office of Juvenile Justice and Delinquency Prevention?

(b) Are you trained or experienced in the juvenile law of the states?

(c) Are you familiar with the extensive literature available in the field of Juvenile Delinquency and Prevention?

(d) You have stated that you find much of the research to date incomprehensible. What training or experience equips you to lead the research and evaluation program of National Institute for Juvenile Justice and Delinquency Prevention, or to apply its results?

(e) Are you versed in the various standards for the field developed and published by organizations such as the Institute for Justice Administration and the American Bar Association, the American Corrections Association, and Office of Juvenile Justice Delinquency Prevention's National Advisory Committee. Are you aware that that large body of professional opinion largely contradicts your own views? What knowledge and experience do you set against those views?

Answer. Being the Administrator of OJJDP does not require one to be a specialist in any of the various disciplines that are important for staffing the office and implementing its programs. It does require a competent manager with a broad appreciation of the issues of juvenile justice and delinquency prevention who can shape policy and provide leadership. My experience and education are fully appropriate to the task of being a good administrator.

As a lawyer with experience in private practice, during which time I appeared in Juvenile Court as a defense attorney, as an appointee of the Attorney General with significant administrative and managerial authority, and as formerly Judiciary

Committee Counsel to Senator Laxalt, I feel myself competent to meet the challenges that lie ahead for the Office of Juvenile Justice and Delinquency Prevention.

In November of last year, the Attorney General asked me to take over OJJDP and the intervening months have been the most intensive period of on-the-job training I have ever known. Since taking office, I have made every effort possible to gain the expertise I will need. These efforts have included meeting with juvenile court judges, prosecutors, legal defense, police authorities, corrections administrators, probation officers, state youth service administrators, social workers and eminent researchers in the field. Often, these meetings were out in the field where I had an opportunity to observe at such places as juvenile courts, juvenile detention facilities, prevention projects, and alternative programs. The assistance afforded me by these state, local, and non-governmental leaders has been of immeasurable value.

In my familiarization with the literature in the juvenile justice field, I have been aided tremendously by the joint efforts of OJJDP staff and the National Criminal Justice Reference Service (NCJRS). I am thoroughly familiar with the latter and have been assisted significantly by its library resources. I provided them time on the agenda of the last meeting of the National Advisory Committee (NAC) and I am happy to say that those NAC members with whom I have discussed NCJRS share my view.

In the course of my in-depth review of the research to date in juvenile justice, I will happily admit that I find much of it contradictory and sometimes difficult to understand. In this reaction, I am not alone, but perhaps that is in the nature of research that hypothesizes and questions. In my conversations with practitioners, I have frequently heard it complained that the National Institute of Juvenile Justice and Delinquency Prevention (NIJJDP) studies are of little or no practical value, i.e., the reports are too often written by academics for academics. It is my intention to change this, because applied federal research must deal with important problems, the findings of which can reasonably be expected to assist states and communities in shaping their policies.

I am familiar with the standards of which you spoke. In fact, I recently approved the obligation of funds for national dissemination of and training on those very standards. However, it must be remembered that they are voluntary. I am also convinced that professional opinion in juvenile justice about which approaches are best exhibits many conflicts. The fact that I differ with others should not be alarming. It is my belief that national policy is best formed as the result of healthy dialogue among concerned and reasonable men and women.

Attachments.

SUMMARY OF PARTICIPATION IN THE JJDP ACT AND COMPLIANCE WITH SECTIONS 223(a) (12) AND (13)

DECEMBER 2, 1982

The initial year States and territories could participate in the JJDP Act was fiscal year 1975. During the initial year of participation, 45 of the 56 eligible States and territories received an award. Six States withdrew from participation prior to the fiscal year 1976 awards. This made a total of 39 States and territories participating for the full fiscal year. During fiscal year 1976, four additional States and territories began participation, thus making a total of 43 participating States.

Four more States began participation in fiscal year 1977 which made a total of 47 States receiving an award. However, two States withdrew from participation prior to the fiscal year 1978 award thus making a total of 45 States and territories participating for the full 1977 fiscal year.

During fiscal year 1978, another five States began participation. No State receiving a fiscal year 1978 award withdrew from participation, thus a total of 50 States participated during the full 1978 fiscal year. In fiscal year 1979, an additional territory became eligible for participation, thus raising the number of eligible States and territories to 57. During fiscal year 1979, no State withdrew participation, but one additional territory began participation. This made a total of 51 States and territories participating during fiscal year 1979. During fiscal year 1980, one State withdrew, thus 50 States participated in the Act. During fiscal year 1981, one State renewed participation, one State began participation, and one State withdrew leaving 51 States and territories participating in the JJDP Act of 1974, as amended. During fiscal year 1982 one State renewed participation making a total of 52 participating States and territories. The five States not participating in the Act are:

Nevada, North Dakota, Oklahoma, South Dakota, Wyoming.

Section 223(a)(15) requires States to provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to insure that the requirements of subparagraphs (12)(A), (13) and (14) are met, and for annual reporting of the results of such monitoring to the Administrator. December 31st of each year has been established as the date for submitting the annual monitoring report. According to the most recently submitted and reviewed State Monitoring Report, the following, to date, is a summary of compliance with Section 223(a)(12)(A) and (13).

SECTION 223 (a) (12) (A)

A. Of the 52 participating States, 43 have participated for five or more years and are thus required to achieve full compliance with Section 223(a)(12)(A) of the Act to maintain eligibility for fiscal year 1983 Formula Grant funds. Of these 43 States, a determination has been made that the following 34 States and territories are in full compliance pursuant to the policy and criteria for full compliance with de minimis exceptions.

American Samoa, Arkansas, California, Connecticut, Delaware, District of Columbia, Guam, Idaho, Indiana, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Texas, Trust Territories, Vermont, Virginia, Virgin Islands, Wisconsin.

Nine of these 43 States have not to date been found to be in full compliance with the deinstitutionalization requirement. The nine States are: Alaska, Arizona, Colorado, Florida, Georgia, Montana, New Mexico, Tennessee, Washington.

B. Of the 52 participating States, eight must achieve substantial or better compliance to be eligible for fiscal year 1983 formula funds and four of these States (e.g., designated with * must achieve full compliance for fiscal year 1984 formula fund eligibility: *Alabama, *Hawaii, *Kansas, *Mississippi, North Carolina, Northern Marianas, Utah, West Virginia.

All eight have demonstrated substantial or better compliance and the Northern Marianas has been found in full compliance.

C. One of the 52 participating States, Nebraska, must demonstrate progress to maintain eligibility for fiscal year 1983 funds and must achieve substantial or better compliance for fiscal year 1986 formula fund eligibility.

SECTION 223 (a) (13)

There are 29 States which have demonstrated compliance with Section 223(a)(13) of the Act. Twenty-two other States have reported progress while one reported no progress.

Those 29 States which have been found in compliance with the separation requirements are: American Samoa, Arizona, Arkansas, Connecticut, Delaware, District of Columbia, Guam, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Northern Marianas, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Texas, Vermont, Virginia, Virgin Islands, Wisconsin.

The 22 States reporting progress are: Alabama, Alaska, California, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, New Mexico, Ohio, Oregon, Trust Territories, Utah, Washington, West Virginia.

The one State reporting no progress is Tennessee.

Prepared by: Doyle Wood, Formula Grants and Technical Assistance Division, OJJDP.

[Memorandum]

Subject: Status of States' Annual Report to the Administrator Pursuant to Section 223(a)(15) of the JJDP Act, as amended
Date: Apr. 5, 1983.
From: David D. West, Director, FGTAD; Doyle A. Wood, Juvenile Justice Specialist.

This is in response to Mr. Winkfield's April 4, 1983, memorandum to you requesting information on the above noted subject. Section 223(a)(15) of the JJDP Act, as amended, requires States participating in the Formula Grant Program to provide for an adequate system of monitoring jails, detention facilities, correctional facilities and non-secure facilities to insure that deinstitutionalization of status offenders and non-offenders, separation of juvenile offenders and adult offenders, and removal of juveniles from adult jails and lockups are met pursuant to the requirements of Sections 223(a)(12), (13), and (14) of the Act. Section 223(a)(15) also requires the States to annually report the results of this monitoring effort.

The regulations which provides States the specific guidance in meeting the monitoring and reporting requirements of Section 223(a)(15) are contained in 28 CFR, Part 31, Subpart 31.303(i), dated December 31, 1981 of which a copy is attached. [See page 173.]

Section (5), entitled Reporting Requirement, specifies that the annual monitoring report shall be submitted by December 31 of each year. We established the last day of the calendar as the due date of the annual report to allow States the maximum time possible to monitor, to collect and analyze data, and to prepare and submit the report.

As you can note the date which OJJDP released the final regulations for which States must adhere in monitoring and reporting, corresponds to the exact date which the 1981 reports were due, (i.e., December 31, 1981). Thus, the first monitoring report which States must show the extent of compliance with the jail removal requirement of Section 223(a)(14) is the 1982 report, due December 31, 1982. to date, we have received all but nine of the reports due. A letter was sent on March 15, 1983, to those States which had not submitted their 1982 report. This letter requested their immediate attention to this matter by submitting their State report. OJJDP has officially notified four States of the results of our review and analysis of their 1982 reports. Since all reports have not been reviewed and analyzed and, as stated above, since the 1982 reports are the first to reflect State progress towards jail removal, OJJDP does not have information available from State monitoring reports to indicate how many juveniles are held in adult jails and lockups. However, other sources of information and data are available to OJJDP which provides an indication of the extent to which juveniles are detained in adult jails.

There is a great variation in the estimates of the annual number of children who are held in adult jails and lockups. One of the earliest projections and perhaps the highest is that of Rosemary Sarri, who in her 1974 publication entitled "Under Lock and Key: Juveniles in Jails and Detention" suggested that 500,000 juveniles are incarcerated in adult jails and lockups each year. The University of Illinois, Community Research Center (CRC) documented in a 1978 survey that 170,714 juveniles where held in adult jails. Given the actual survey response rate, this figure is an estimated actual total of 213,647 juveniles held annually in adult jails. In addition, CRC documented 11,592 juveniles in adult lockups. Again, given the response rate to the survey, the estimated actual number of juveniles held in adult lockups is 266,261. This yields an overall estimate of 479,908 persons below the age of eighteen held for any length of time in an adult jail or lockup during 1978.

OJJDP conducted a survey during the first six months of 1981 to respond to a report required by Congress pursuant to the jail removal amendment to the JJDP Act in December 1980. Reiterating that only 35 of the 50 States had reported as of the deadline for the return of the survey, this response showed that the number of juveniles detained in adult jails and lockups for any given day during January—June of 1981 was 1,778. The most recent data on juveniles in jails comes from the OJARS's Bureau of Justice Statistics. In a February 1983 BJS Bulletin entitled "Jail Inmates 1982," a U.S. Bureau of the Census survey determined the number of juveniles held in adult jails. Significantly, this survey did not include adult lockups and this is critical with respect to juveniles because it is the police lockup and the drunk tank to which alleged juvenile offenders are so often relegated pending court appearance. The 1982 BJS/Bureau of Census data shows and the Bulletin dated February 1983 states the following:

"Despite persistent efforts to remove juveniles from adult facilities, the estimated number of juveniles in adult jails in June 1982 (1,700) was unchanged from that reported more than 4 years earlier. Juvenile status is a legal concept denoting that the individual will appear before a juvenile court for adjudication or placement rather than before an adult court. In most States, juveniles are persons who have not reached their 18th birthday, but in a few States juvenile status ends with the 16th birthday. In addition, most States allow juveniles to be tried as adults if circumstances warant it. Consequently, it is possible for an inmate with adult status to be younger than some of the inmates with juveniles status.

"The average daily inmate population for juveniles was not reported for the year ending on June 30, 1982, nor was the average length of stay. If the average daily population approximates the number in jail on June 30 and if an assumption of an average stay of 2 days is made—an assumption considered reasonable by juvenile justice researchers—then more than 300,000 juveniles would have been held in jail at some time during the 12-month period."

As shown, there is much data and information on the placement of juveniles in adult jails and lockups. Regardless of the true figure, it is clear that the practice of jailing juveniles has not diminished during the last decade.

If you desire clarification or request additional information, please contact me.

RESPONSES OF ALFRED S. REGNERY TO QUESTIONS OF SENATOR ARLEN SPECTER

FEDERAL LEADERSHIP IN JUVENILE JUSTICE

Question. (a) Do you believe there is a need for Federal leadership in juvenile justice and delinquency prevention?

Answer. (a) Yes.

Question. (b) The Juvenile Justice and Delinquency Prevention Act is based upon findings that States and local communities lack the resources to deal comprehensively with the problems of juvenile delinquency and that previous Federal programs had "not provided the direction, coordination, resources and leadership required to meet the crisis of delinquency." Under the Act, it is the "declared policy of Congress to provide the necessary resources, leadership and coordination" to prevent and reduce juvenile delinquency and "to increase the capacity of States and local governments and public and private agencies to conduct effective juvenile justice and delinquency prevention and rehabilitation programs and to provide research, evaluation, and training services in the field of juvenile delinquency prevention."

Answer. (b) Yes.

JAIL REMOVAL

Question. (a) How many juveniles are held in adult jails and lockups annually?

Question. (b) Do you believe that the Juvenile Justice and Delinquency Prevention Act's removal mandate "has been attained"?

Question. (c) What would you do as Administrator to ensure the fulfillment of the removal mandate?

Answers. See page 141.

DEINSTITUTIONALIZATION OF STATUS OFFENDERS AND NONOFFENDERS

Question. (a) How many juvenile nonoffenders and status offenders are still being detained annually despite the deinstitutionalization mandate of the Juvenile Justice and Delinquency Prevention Act?

Question. (b) Are juveniles detained for less than 24 hours included in the State reported statistics?

Question. (c) While substantial progress has been made toward deinstitutionalization with 35 states now reporting full compliance, can we really say this objective of the Juvenile Justice and Delinquency Prevention Act has "been attained"?

Question. (d) Are you familiar with the March 22 GAO report "Improved Federal Effort Needed to Change Juvenile Detention Practices"? Do you accept its findings and recommendations?

Question. (e) Specifically, chapter 3 of the GAO report recommends enhanced OJJDP involvement in the implementation of national standards regarding detention, providing appropriate alternatives to secure detention, improving state monitoring and recordkeeping systems and increasing the assistance provided states and localities on how other states have successfully dealt with juvenile detention. What efforts would you make in these areas?

Answers. See page 140.

FUNCTIONS OF THE ADMINISTRATOR

Question. (a) The Administrator of the Office of Juvenile Justice and Delinquency Prevention is authorized by statute to "exercise all necessary powers, subject to the general authority of the Attorney General." What is your understanding of this provision?

Answer. (a) It is my understanding that "exercise all necessary powers, subject to the general authority of the Attorney General" means that I have authority to enter into grants, contracts, interagency agreements and cooperative agreements within the limits specified by the statute, the authority to extend, modify, and to terminate them. Additionally, I have rulemaking authority by which I can promulgate regulations, and authority to administer the Office.

Question. (b) The Juvenile Justice and Delinquency Prevention Act requires the Administrator to submit to the President and the Congress an annual report prior to December 31, 1982. (Section 204(b)(5)) When can Congress expect to receive this report?

Answer. (b) The Fifth as well as the Sixth Annual Evaluation are currently undergoing my review. I expect them to be forwarded to the Attorney General within three weeks.

Question. (c) What Federal agencies have transmitted a juvenile delinquency development statement to you for last year?

Answer. (c) No federal agencies have transmitted a juvenile delinquency development statement for the last year.

Question. (d) Have you prepared the "brief but precise comprehensive plan for Federal juvenile delinquency programs, with particular emphasis on the prevention of juvenile delinquency" required by the Juvenile Justice and Delinquency Prevention Act?

Answer. (d) We are in the process of preparing a brief concise comprehensive plan for federal juvenile delinquency programs. One of the first steps in the development of this plan is an assessment of the various delinquency prevention programs that exist throughout the federal government. Although we are generally aware that there are many programs that are delinquency prevention oriented, we are preparing a comprehensive inventory and analysis of the various programs.

Question. (e) What recommendations do you have for modifications in budget requests, organization, management, personnel, standards, and implementation plans necessary to increase the effectiveness of federal juvenile delinquency programs?

Answer. (e) These issues are currently under review.

Question. (f) What budget request or funding recommendations have you made for the Office of Juvenile Justice and Delinquency Prevention?

Answer. (f) None

OJJDP PROGRAM PLANS

Question. (a) Specifically how are you planning to expend the Federal juvenile justice funding appropriated for fiscal year 1983?

Answer. (a) A fiscal year 1983 program plan is in the final development stage and will shortly appear in the Federal Register.

Question. (b) Have you begun formulating program plans for fiscal year 1984? If so, what are they?

Answer. (b) No.

Question. (c) Do you have any plans to allocate OJJDP funding to support runaway and homeless youth programs?

Answer. (c) Yes.

Question. (d) If so, how are you coordinating such efforts with those of the Department of Health and Human Services, which has authority under the Runaway and Homeless Youth Act title of the Juvenile Justice and Delinquency Prevention Act to administer such programs?

Answer. (d) I have met with and am coordinating the project with the Assistant Secretary for Human Development Services at the Department of Health and Human Services.

Question. (e) Are you planning to support a program to gather and share information on suspicious disappearances and serial murders?

Answer. (e) A request for the funding of such a project has been submitted. No action has been taken.

Question. (f) If so, how are you coordinating such efforts with the FBI and Bureau of Justice Statistics to take advantage of their expertise?

Answer. (f) Both agencies are reviewing the proposal.

Question. (g) A number of States provide for the trial of juveniles in adult criminal courts for serious crimes. What does research indicate the results of such practices to be? Are tougher sentences meted out? Has greater specific or general deterrence demonstrably resulted?

Answer. (g) In 1978, the national census revealed that there were over 9,000 juveniles judicially waived to adult courts, over 2,000 youth prosecuted for serious offenses in adult courts due to concurrent jurisdiction provisions, over 1,300 youth prosecuted as adults because of excluded offense provisions, and a quarter-of-a-million 16 and 17 years old arrested and referred to adult courts due to lower ages of jurisdiction in twelve states. The majority of youth referred to adults courts for trial were not charged with personal offenses. This was true for all mechanisms with the exception of excluded offenses, where state legislatures single out serious personal offenses for adult court referral. Property offenses resulted in the most referrals—46 percent of the concurrent jurisdiction cases, and 30 percent of the age of jurisdiction cases. Offenses against persons represented a smaller percentage of the offenses referred: 32 percent in the judicial waiver states; 41 percent in concurrent jurisdiction states and 11 percent for age-of-jurisdiction states. Violent offenses, i.e., murder, manslaughter, rape, robbery, and aggravated assault, accounted for less than one-fourth of the judicial and prosecutorial referrals and almost one-twentieth of the arrests of 16 and 17 year old youths in the twelve age-of-jurisdiction states. Public order offenses accounted for 17 percent of the judicial waivers, 9 percent of the prosecutorial direct filings; and 27 percent of the age-of-jurisdiction cases. Most of the youth tried in adult courts are convicted or found guilty. Among the 7,318 youths judicially waived to adult courts, disposition data were available on 3,418 of them. Ninety percent of these resulted in conviction or guilty pleas. Fifty-three percent of those convicted received sentences not calling for incarceration—such as fines or probation. Forty-three percent received a sentence of confinement. Among those confined, 27 percent received sentences of one year or less, 39 percent received sentences of one to five years, 16 percent received five to ten years, 14 percent received sentences of more than 10 years, 2 percent received indeterminate sentences, and 2 percent received life sentences.

Eighty percent of the "known" concurrent jurisdiction (312) and lower age of jurisdiction cases (353) resulted in sentences of one year or less.

These results are from the first of a three-phase research effort. Phase two involves an examination of court dispositions in selected jurisdictions among three groups of offenders charges with similar offenses:

Juveniles handled in juvenile court;

Juveniles handled in adult courts;

Young adults (aged 18 to 26) handled in adult courts.

In phase three, the sentences received by the juveniles will be studied. Results are expected to be available in about twelve months.

Question. (h) What plans do you have to develop and implement community-based alternatives to traditional forms of institutionalization for juvenile offenders?

Answer. (h) Restitution by Juvenile Offenders, An Alternative to Incarceration, and the Project New Pride Replication are both community-based alternatives to traditional forms of institutionalization for juvenile offenders.

Project New Pride provides specially designed, intensive, comprehensive community-based treatment for serious offenders. It is aimed at a population of adjudicated youth aged 14–17 under court supervision for a serious offense with at least two prior adjudications/convictions for serious misdemeanors or felonies.

At present, seven grants are terminating and four will be refunded with partial assumption of cost at the local level to allow further refinement of the model. A marketing plan will be developed to allow further replication.

The Restitution Program is also a community-based alternative where monetary, community service and victim restitution was performed as an alternative to incarceration. The program was extensively tested and was found to be successful. A marketing plan will be implemented in FY 1983.

Question. (i) What plans do you have to encourage the implementation of juvenile justice standards?

Answer. (i) The Standards developed by the last NAC are being distributed and continue to be available.

Question. (j) What plans do you have to develop and implement programs to keep students in elementary and secondary schools?

Answer. (j) Prevention of Delinquency Through Alternative Education was funded in 1980 for two years with third-year funding contingent upon past performance. Fourteen projects have received third-year funding.

Fiscal year 1983 funds in the amount of $400,000 will be used to fund the third year of one additional project should an assessment and review of the project's performance indicate that the project qualities.

Question. (k) What plans do you have to develop and implement programs to prevent school violence and vandalism?

Answer. (k) We are considering a joint program with the Department of Education and the National Institute of Justice, and we have discussed other initial proposals with representatives of teacher organizations and of major school districts.

Question. (l) What plans do you have to develop and support programs stressing advocacy activities aimed at improving services to youth?

Answer. (l) OJJDP undertook a major initiative, "Youth Advocacy: Improving Availability and Quality of Youth Services," as a demonstration program begun in 1980. A total of 22 grants were awarded over a three-year period, totalling

$16,976,519. The majority of the advocacy projects will be completed by this fall, and the evaluation will not be available until later in the year. While no future advocacy activities are currently planned by the Office, we will review and use the evaluation data in making long-range plans for OJJDP initiatives.

Question. (m) Do you believe juvenile justice advocacy activities have achieved important improvements in the treatment of youth? If so, what are they? If not, why not?

Answer. (m) The final evaluation of the youth advocacy initiative is not yet available. Interim evaluation data indicates that the advocacy projects have affected some of the following changes:

(*i*) In Washington, "Families in Conflict" legislation was passed that provided financial incentives for parents to keep youth in their homes.

(*ii*) In Ohio, a major revision of the State Juvenile Code was accomplished which resulted in removal of status offenders and misdemeanants from the secure detention of the Department of Youth Services.

(*iii*) In Arkansas, the General Assembly passed eight amendments to the Juvenile Code which added rules of procedure for juveniles; and

(*iv*) In August of 1982, an Oregon judge ruled that the detention of children in adult jails is *per se* unconstitutional and issued an order prohibiting the confinement of juveniles in the Columbia County jail.

Question. (n) What plans do you have to develop and implement programs for youth employment?

Answer. (n) A $100,000 training grant will be awarded to 70001 Ltd., the Youth Employment Company, to provide training for state and local juvenile justice personnel and community-based organization staff in the delivery of employment training and placement services for serious violent offenders. The objectives of the 70001 project focus on upgrading the capability of juvenile justice personnel and community program staff to train and place serious juvenile offenders in private sector employment.

Question. (o) What plans do you have to develop and implement programs relating to juvenile delinquency and learning disabilities?

Answer. (o) An $89,088 supplemental grant has been awarded to the Research and Development Training Institutes to continue training based on the results of the Association for Children with Learning Disabilities Research and Development Project. Regional seminars for policymakers and program planners will be continued, and curriculum modules will be developed for inclusion in other training programs. The major purpose of the training is to create awareness and understanding of learning disabilities among justice system personnel and to promote program development based on the ACLD Remediation model for learning-disabled juvenile offenders.

Question. (p) What plans do you have to develop and implement programs to prevent and treat juvenile delinquency through the development of community-based diagnostic, treatment and rehabilitative services?

Answer. (p) Project New Pride provides specially designed, intensive, comprehensive community-based treatment for serious offenders. Diagnostic, treatment and rehabilitative services are provided.

At present, seven grants are terminating and four will be refunded with partial assumption of cost at the local level to allow further refinement of the model. A marketing plan will be developed to allow further replication.

Question. (q) What plans do you have to develop and implement programs to strengthen the family?

Answer. (q) No specific programs have been developed, though I am currently reviewing the options available.

Question. (r) What plans do you have to develop and implement programs to treat and rehabilitate juveniles who abuse alcohol and other drugs?

Answer. (r) The OJJDP and HHS's Administration for Alcohol, Drug Abuse and Mental Health (ADAMHA) have, as part of the Corrdinating Council, developed a task group made up of representatives of each of the ADAMHA Institutes of OJJDP to examine the alcohol, drug, and mental health needs of the juveniles who come into contact with the law. The group intends to examine what is needed as well as what is being offered by ADAMHA and OJJDP. Where gaps are found, recommendations will be made on how to address them. It is our belief that considerable work is going on in this area and that better coordination between these organizations will help alleviate some of the problems we currently face.

Question. (s) What plans do you have to develop and implement programs to encourage restitution as a sentencing alternative for serious offenders?

Answer. (s) Restitution by Juvenile Offenders, An Alternative to Incarceration, was implemented by the Special Emphasis Division for 1978 through mid-1982. Preliminary evaluation results show that the program is a successful alternative dispositional approach. A marketing plan will be developed for implementation in FY 1983.

Question. (t) What plans do you have to develop and implement programs to relieve the overload of juvenile justice courts, probation services, and correctional facilities?

Answer. (t) As approved in the FY 1983 National Institute of Juvenile Justice and Delinquency Prevention (NIJJDP) Program Plan, the following projects have been included to contribute to relieving the overload in the juvenile courts, probation services, and correctional facilities:

Juvenile courts

(*i*) A grant award to the National Council of Juvenile and Family Court Judges (NCJFCJ) in the amount of $200,000 has been approved in the FY 1983 OJJDP Program Plan and is anticipated for award. This will be the seventh award to the NCJFCJ for the development and implementation/transfer of automated juvenile justice information systems which will produce data on the handling of youths by the nation's juvenile justice systems. The long-range goal of the JISRA program is the development of model, comprehensive, automated systems which would link police, court, correctional, and social service operations in a single jurisdiction.

(*ii*) A grant award to the National Center for Juvenile Justice (NCJJ) in the amount of $300,000 has been approved in the FY 1983 OJJDP Program Plan and the award is anticipated. This will be the fourth award to the NCJJ for the collection, processing, analysis, and reporting of available information regarding young people and the juvenile justice system. This project is targetted at the continued development of juvenile and family court information, general analyses of data to study trends, and the initial development of a standardized reading format for the improvement of reporting trends.

(*iii*) $300,000 has been approved in the FY 1983 OJJDP Program Plan for an award to a national organization for "Juvenile and Family Court Training".

(*iv*) $50,000 has been approved in the FY 1983 OJJDP Program Plan for an award to a national organization for "Courts Technical Assistance".

(*v*) $60,000 has been approved in the FY 1983 OJJDP Program Plan for an award to a national organization for "Juvenile Court Seminars". It is anticipated that three training sessions will be conducted concerning the management of juvenile court intake of juvenile justice agencies, and program and policy strategies related to serious and repetitive juvenile offenders. These sessions will be offered on a national basis to juvenile justice professionals.

Correctional facilities

(*i*) $100,000 has been approved in the FY 1983 OJJDP Program Plan for an award for training in the area of "Private Sector Corrections".

(*ii*) A grant award has been made to the Commission on Accreditation for Corrections (CAC) regarding the Standards Implementation mandate of 1974 Act. Although not specifically addressed to the area of "relieving the overload", the training encourages the improvement of state and local juvenile justice programs indirectly through the adoption of standards relevant to the problem of management.

(*iii*) An award has been made to the American Correctional Association (ACA) regarding the provision of technical assistance to juvenile correctional agencies interested in the adoption of standards and the development of policies and procedures to improve their programs. This improvement could be in the form of management resulting in relief from overloading in the agency.

Question. (u) Preliminary findings of an evaluation project funded by the Office of Juvenile Justice and Delinquency Prevention demonstrated that law-related education, when properly implemented, reduces the incidence of delinquent behavior ranging from truancy to serious and violent offenses among participating young people.

What are your plans to fund and evaluate law-related education? What are your plans to continue technical assistance and dissemination of law-related education nationally?

Answer. (u) I consider Law-Related Education a most effective delinquency prevention program; it is directed towards teachers and educational leaders and provides effective methods and curricula.

Since October, 1979, $1,156,216 has been invested by OJJDP in the evaluation of Law-Related Education programs by the Social Science Consortium, Inc. The evaluation reports have provided positive support to other reports of the success of the program; the decision as to whether additional evaluation is needed has not yet been made and is currently a matter of staff review.

FORMULA GRANT IMPLEMENTATION

Question. (a) Has the Office of Juvenile Justice and Delinquency Prevention published regulations providing for the implementation of the juvenile justice formula grants in fiscal year 1983? Please provide us with a copy.

Question. (b) Are you finding that as the deinstitutionalization mandate is being achieved, the states are using their juvenile justice block grant funding to accomplish other objectives of the Act such as jail removal, delinquency prevention, rehabilitation and treatment, programs to strengthen the family unit, programs to encourage youth to continue their education, deterrence of illegal juvenile gang activities, and delinquency programs for the learning disabled and other handicapped juveniles?

Question. (c) Do you favor continuing to distribute Federal juvenile justice funding by means of block grants to the States? Why?

Question. (d) In your February 23, 1983 speech at the Tenth National Conference on Juvenile Justice, you alluded to "sufficient progress (having) occurred in the areas of removal and separation so that formula grant resources in many, if not most, states can now be redirected toward other program priorities." Would you elaborate on the progress toward removal of juveniles from adult jails and lockups to which you referred?

Question. (e) Will the Office of Juvenile Justice and Delinquency Prevention seek to influence or control the "other program priorities" to which the formula grant resources are redirected?

Question. (f) How do you view the regulation promulgated December 31, 1982, regarding States allocating a minimum of 30 percent of their juvenile justice block to programs designated for serious and violent offenders?

Answers. See page 141.

DELINQUENCY PREVENTION

Question. (a) Delinquency prevention is a primary purpose of the Juvenile Justice and Delinquency Prevention Act. How do you propose to administer the Federal Juvenile program to meet the Act's delinquency prevention objectives?

Answer. (a) I propose a multi-faceted approach to delinquency prevention. This approach which entails utilizing the resources of OJJDP as well as the other federal agencies on the Coordinating Council very definitely meets the objectives of the JJDP Act. The manner in which I propose meeting the objectives of the Act are having the Coordinating Council address primary prevention aspects of delinquency prevention and OJJDP address tertiary prevention. The Coordinating Council and OJJDP will share responsibility for secondary prevention. The Office will continue to collect data on delinquency, it will continue to do some research, and it plans to explore the feasibility of providing training to those groups that traditionally serve as community-based delinquency prevention organizations. I have met with members of the National Collaboration and asked them what the Office could do in the area of delinquency prevention. The members stated that they were not interested in large grants for demonstration programs, but they were interested in training. As previously stated, we will review any proposal they submit in this area. Further, I intend to ensure that the states continue to expand their formula grant funds on delinquency prevention activities, if they feel these are a priority. Finally, the Coordinating Council has allocated $750,000 for delinquency prevention activities. Although the types of activities are not yet known, or for that matter, it is not yet known if the $750,000 is firm, I can assure you that something will be done by the Council in the area of delinquency prevention. In addition to OJJDP allocating funds for delinquency prevention, I will actively solicit funds for these type activities from other members of the Coordinating Council.

Question. (b) Have you decided not to continue funding for significant parts of the delinquency prevention research and development programs that were being developed by the Office of Juvenile Justice and Delinquency Prevention? If so, specifically what projects are being discontinued and why?

Answer. (b) To date, I have not made any decision regarding delinquency prevention research. All research projects, like all other projects that come up for renewed funding, are undergoing the scrutiny of staff to ensure they are consistent with the Office's overall goals and are achieving the goals set out for them. I am not terminating research relating to delinquency prevention solely because it is related to prevention.

Question. (c) What delinquency prevention efforts are being undertaken by the Office of Juvenile Justice and Delinquency Prevention?

Answer. (c) *Current OJJDP delinquency prevention activities.*—OJJDP is continuing its commitment to develop knowledge and strategies in delinquency prevention. The Office has moved away from support of action programs and is concentrating on basic and applied research; demonstration programs; training/technical assistance; and coordination of Federal delinquency prevention efforts. The experiences and the knowledge gained through research and evaluation have enabled the Office to fulfill its leadership role—directing the Federal juvenile delinquency effort, developing information for practitioners, and testing new strategies. An agency which assumes responsibility for leadership in the field of juvenile delinquency cannot exert that leadership in a manner which is productive unless it can provide answers to questions regarding what works and the direction in which the field should be moving.

In 1982, with the assistance of OJJDP, the Federal Coordinating Council adopted its first program plan. It is a significant attempt to assess and synthesize information relative to the myriad of Federal programs and policies that have an impact on juvenile delinquency. Council members have agreed that there are duplications of effort, gaps in activities, and problems associated with dissemination of useful program information to States. Implementation of this plan is expected to begin in 1983. Other delinquency prevention efforts are currently receiving OJJDP support.

NIJJDP.—Two major accomplishments of NIJJDP are the program development and evaluation of the Delinquency Prevention Research and Demonstration Project and the Serious Violent Offender Project Part II. These are described elsewhere in this paper. Other efforts are noted here.

Law Related Education (LRE) projects continue to receive support. LRE is a school/community targeted approach to the prevention and deterrence of delinquency. LRE is defined by Congress as "education about the law, the legal process and legal system, and the fundamental principles and values on which these are based." Its purpose is to enable youth to become more informed, effective and responsible participants in society.

NIJJDP is also supporting an evaluation of the School Crime Reduction Program which was started by the Special Emphasis Division in 1976. The program has been a cooperative venture between OJJDP and the Department of Education. The evaluation is assessing the effect of selected interventions and school practices on the incidence of school crime.

NIJJDP has been studying the link between juvenile delinquency and learning disabilities since 1976. The major hypothesis of the LD efforts is that learning disabilities can cause school failure which, in turn, can lead to juvenile delinquency. NIJJDP's work in this area represents a complete cycle of initial state-of-the-art assessment, research-based program development, implementation and testing, and the application of results in training and program replication. Initial results of this process have shown that learning disabilities have a direct positive effect on delinquency. The results of these studies have been applied to the learning disabilities component of the Project New Pride Replication.

Additional studies presently supported by NIJJDP are:

High Risk and Early School Behavior and Later Delinquency
Choice of Non-delinquent and Delinquent Careers Among Puerto Rican Dropouts
School Discipline and Justice System Involvement
Transition to Junior High and the Deviance Process.

Formula Grants and Technical Assistance Division.—The Formula Grants and Technical Assistance Division has developed a technical assistance strategy which incorporates research findings, evaluation results and practical application strategies. Delinquency prevention technical assistance is targeted; its purpose is to assist state and local governments in the systematic formulation of strategies and program development which is based on the most promising theories of delinquency causation.

The elements of the TA prevention program are:

Development of implementation strategies for the Delinquency Prevention Research and Development Program. TA staff and the Westinghouse National Issues Center participated with NIJJDP to develop and implement this experimental program in 1980. Through the life of the six local projects, the TA branch has managed these projects and delivered intensive technical assistance.

Direction and assistance to the States, through the State Initiatives Program and to state and local prevention programs identified through OJJDP's technical assistance request process. Assistance has been given via publications on prevention theories and strategies, working papers on school, community and employment prevention strategies, and on-site technical assistance.

The Formula Grants Branch of FGTAD developed and implemented the Foster Grandparents/Delinquency Prevention Program, which culminated in three interagency agreements between OJJDP and ACTION. Cooperative Foster Grandparents programs were implemented in Louisiana, Georgia and Washington State. This program gives foster grandparents and retired senior volunteers the opportunity to serve as role models for young people, reinforcing law-abiding behavior and providing guidance and companionship to juvenile offenders and non-offenders. The program is intended to result in the development of stronger social bonds in juveniles and their families.

Special Emphasis Division.—OJJDP has awarded funds to eight cities that will implement OJJDP's "Violent Offender, Part II" Initiative. This program has been designed to test strategies for preventing and reducing juvenile crime through community organization. The program's primary objective is to test the concept that neighborhood-based organizations can mobilize neighborhood residents to improve the effectiveness of institutions responsible for the socialization and control of youth, reduce the opportunities for commission of juvenile crime, and increase legitimate opportunities for youth to become productive members of their community. Special attention is being directed at the families of violence-prone youth. The evaluation of this program which is being supported by NIJJDP, calls for measuring the impact of the interventions at six month intervals. Data analysis will attempt to determine which youth engage in violent behavior despite apparent positive social development, and which youth are able to avoid delinquency and violent crime despite problems associated with residence in high-crime neighborhoods.

Concentration of Federal efforts.—A major priority for the Concentration of Federal Effort is the implementation of the Federal Coordinating Council program plan which would facilitate the coordination of Federal delinquency prevention programs. As stated previously, coordination is only one aspect of this plan. The Council is also planning to disseminate the wealth of information that has been developed by the various agencies in the Federal government. The Council is exploring ways to synthesize this information, formatting it so that it is most useful to its target audiences, and provide a way to make it accessible to the public.

In 1982 a cooperative agreement was signed between OJJDP and the National School Boards Association which will enable the NSBA to synthesize Federal school-based prevention strategies and publish this information in a manner useful to school board members and other school leaders throughout the nation. This resource document will be published in 1984.

Question. (d) What delinquency prevention efforts are being planned for the Office to undertake in the future?

Answer. (d) The Office is currently meeting with various Coordinating Council members to determine what delinquency prevention efforts should newly be taken on. As stated in question #1, the Council has appropriated funds for delinquency prevention efforts, but it is still too early to determine the scope or breadth of those efforts.

Question. (e) What delinquency prevention efforts are being undertaken by other Federal agencies and departments?

Answer. (e) the role of other Federal agencies in delinquency prevention. Congress created the Coordinating Council on Juvenile Justice and Delinquency Prevention to facilitate the coordination of delinquency-related programs. Given the Administration's direction to consolidate and maximize the use of Federal monies for human service programs, the need for the mandated coordination has never been greater. To provide an overview of the complexity of such task, a brief summary of involvement by other Federal agencies in delinquency programs follows.

The programs discussed are classified as "delinquency-related" and not delinquency prevention, per se, since Federal agencies other than OJJDP use different categories for their youth service programs. For example, in 1980 the Fifth Analysis and Evaluation of Federal Juvenile Delinquency Programs reported that:

Of the 45 programs studied, only 9 (20 percent) have the reduction or prevention of delinquency explicitly stated in their legislation. Five others refer to juvenile delinquency in their regulations, guidelines, or other official documents. These 14 programs are administered by six cabinet-level departments and one independent agency.

Only five programs outside of OJJDP indicated any significant involvement in efforts to deinstitutionalize status offenders and dependent and neglected youth, a specific mandate contained in the JJDP Act. Those programs involved in deinstitutionalization indicated that a major obstacle to success has been the scarcity of alternative direct service programs at the community level.

Nine Federal programs reported spending approximately $225 million on institutional services for youth, or less than 5 percent of the total amount expended on services to youth by the 45 programs.

In the period of 1981–1982, twenty of the 45 programs discussed in the Fifth Analysis and Evaluation were included in the nine block grants created under the Omnibus Budget Reconciliation Act of 1981 (P.L. 97–35). The budget for these programs was reduced by $3 billion, a reduction of approximately 22 percent between fiscal year 1981 and fiscal year 1982. Twenty programs had their budgets reduced. Although total appropriations were reduced from $13.5 billion in FY 1981 to $10.5 billion in fiscal year 1982, nine programs received increased allocations and one remained the same. (See Table II).

Of the twenty delinquency-related programs placed in block grants, six were education programs, and six were programs in the areas of alcohol, drug abuse, or mental health. The Social Services Block Grant, the Child Welfare Services Block Grant, the Maternal and Child Health Block Grant, and the Community Services Block Grant each absorbed one delinquency-related program. In addition, the Jobs Training Partnership Act (JTPA), the successor to the Comprehensive Employment and Training Act, absorbed four programs. The JTPA does not become effective until the beginning of FY 1984.

Four programs were eliminated in 1981. They were:

10.661—Youth Conservation Corps—Grants to States;
10.663—Youth Adult Conservation Corps—Grants to States;
Urban Initiatives Anti-Crime Program; and
Urban Crime Prevention.

Table III summarizes the fiscal year 1982 status of Federal delinquency-related programs. In addition to listing the programs the table indicates whether these retained their categorical status or were included in block grants.*

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*Table III not forthcoming at presstime.

Table II

Fiscal 1981-1983 Program and Budget Changes, Delinquency-Related Programs

FEDERAL CAT. NO.	PROGRAM	PROPOSED STATUS	FY LEVEL APPROPRIATIONS		NOTES
		FY 83	82	81	
ACTION					
72.001	The Foster Grandparent Program	48.4m	48.4m	46.9m	• Continuing Resolution
DEPARTMENT OF AGRICULTURE					
10.661	Youth Conservation Corps--Grants to States	0	0	18m	• No funds appropriated for FY 82, 83, or 84
10.881	Cooperative Extension Service 4-H	83.9m	315.7m	303.7m	
10.663	Young Adult Conservation Corps--Grants to States	0	0	200m	• Eliminated in 1981 • Portion of FY 81 funds deferred to FY 82 for scheduled phaseout • Phaseout by 9/30/82
DEPARTMENT OF EDUCATION					
84.008	Alcohol and Drug Abuse Education Program	*2.9m	2.9m	2.9m	• Authorized for inclusion in the Education Consolidation and Improvement Act of 1981, Chapter II. * Reflects continuing resolution at FY 82 level. Program requests 2.6m of Discretionary funds for FY 83
	Education For All Handicapped Children Act of 1975 (P.L.94-142)	0	931m	874m	• The House Education and Labor Committee voted unanimously in favor of Bill H.J. Res. 388, which called on the full Congress to veto the proposed new regulations for P.L. 94-142. * Continuing Resolutions funds at current (FY 82) operating level.

Table II (Cont'd)

FEDERAL CAT. NO.	PROGRAM	PROPOSED STATUS	FY LEVEL APPROPRIATIONS		NOTES
		FY 83	82	81	
DEPARTMENT OF EDUCATION - CON'T					
84.010	Educationally Deprived Children--Local Educational Agencies	2.6b	2.6b	2.9b	
84.011	Educationally Deprived Children, Migrants--Basic State Formula Grant	256m	256m	266m	
84.013	Educationally Deprived Children in State Administered Institutions Serving Neglected or Delinquent Children	32.0m	32.0m	33.9m	
84.047	Upward Bound	24.8m	63.8m	66.5m	
84.048	Vocational Education-Basic Grants to States	*500m	496.8m	518m	* In the FY 83 proposal both the Vocational Education and Adult Education Programs will be folded into a block grant. (The amount reflects both programs)
84.056	Emergency School Aid Act--Basic Grants to Local Educational Agencies	*	*	33.4m	• Terminated 6/30/82 * Program authorized for inclusion in the Education and Improvement Program, Chapter 2
84.057	Emergency School Aid Act--Grants to Non-Profit Organizations	*	*	5m	* Program authorized for inclusion in the Education and Improvement Act Program, Chapter 2
84.060	Indian Education-Grants to Local Educational Agencies (Part A-Title IV)	32.2m	30.4m	53.5m	• Requested a recision for FY 82 of 46.2m
84.061	Indian Education--Special Programs and Projects for Indian Students (Part B Title IV)	9.6m	14.9m	14.5m	• No legislative changes

Table II (Cont'd)

FEDERAL CAT. NO.	PROGRAM	PROPOSED STATUS	FY LEVEL APPROPRIATIONS		NOTES
		FY 83	82	81	
DEPARTMENT OF EDUCATION - CON'T					
84.072	Indian Education--Grants to Non-local Educational Agencies (Part of Part A Title IV)	3.2m	4.5m	4.7m	• No legislative changes
84.088	Instructional Materials and School Library Resources	*	*	161m	* Program authorized for inclusion in the Education and Improvement Act Program, Chapter 2
84.089	Improvement in Local Educational Practice	*	*	66m	* Program authorized for inclusion in the Education and Improvement Act Program, Chapter 2
DEPARTMENT OF HEALTH AND HUMAN SERVICES					
---	Office of Domestic Violence Program	0	0	0	• Closed 1/81 • Transferred to NCCAN (Nat'l Center for Child Abuse and Neglect)
13.235	Drug Abuse Community Service Programs	ADMH Blk Grnt	ADMH	153m	• 432m Total Alcohol Drug Abuse and Mental Health Block Grant (ADMH) Appropriation for FY 82
13.252	Alcoholism Treatment, and Rehabilitation/Occupational Alcoholism Service Programs	ADMH Blk Grnt	ADMH	5m	
13.254	Drug Abuse Demonstration Programs	ADMH Blk Grnt	ADMH	0	• Last year funded FY 80, at 2.4m • Block granted in FY 81
13.257	Alcohol Formula Grants	ADMH Blk Grnt	ADMH	20m	

Table II (Cont'd)

FEDERAL CAT. NO.	PROGRAM	PROPOSED STATUS	FY LEVEL APPROPRIATIONS		NOTES
		FY 83	82	81	
DEPARTMENT OF HEALTH AND HUMAN SERVICES - CON'T					
13.275	Drug Abuse Prevention/Education Programs	ADMH Blk Grnt	ADMH	16.1m	
13.295	Community Mental Health Centers--Comprehensive Services Support	ADMH Blk Grnt	ADMH	213	
13.623	Administration for Children, Youth, and Families--Runaway Youth	*18m	10.5m	11m	• New proposed funds in FY 83 to be used to fund 25 new programs in unserved communities
13.628	Child Abuse and Neglect Prevention and Treatment	17m	17m	22.9m	• Out of the 17m for FY 83 allocation, 6.7m is to be given to States for Grant programs
13.640	Administration for Children, Youth, and Families--Youth Research and Demonstration	•	1.4m	1.2m	• HDS discretionary funds; specific amount unavailable
13.642	Social Services for Low Income and Public Assistance Recipients	*2.4b	2.4b	2.9b	• Continuing Resolution funding at current operating level of FY 82 • Consolidated into Social Services Block Grant
13.645	Child Welfare Services--State Grants (IV-B)	•	156.5m	175m	• Consolidated into Child Welfare Block Grant • Child welfare services, adoption assistance, and foster care would be repealed as Federal programs under the President's New Federalism plan
13.652	Administration for Children, Youth, and Families-Adoption Opportunities (IV-E)	*1.9m	2m	4m	• See above • Open-ended entitlement funding under continuing Resolution provision

Table II (Cont'd)

FEDERAL CAT. NO.	PROGRAM	PROPOSED STATUS	FY LEVEL APPROPRIATIONS		NOTES
		FY 83	82	81	
DEPARTMENT OF HEALTH AND HUMAN SERVICES - CON'T					
13.975	Adolescent Pregnancy Prevention and Services	MCH Block Grant	BG*	8.2m	• Consolidated into Maternal and Child Health Services Block Grant (Total funding 373m)
49.002	Community Action	Block Grant	BG	394m	• Phased out in 81; formerly under the Community Services Administration • Community Services block granted in 1982
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT					
---	Urban Initiatives Anti-Crime Program	*	*	1.1m	* One time funding effective July, 1980 through September, 1982 • Same as Department of Justice Urban Crime Prevention (16.537)
DEPARTMENT OF INTERIOR					
15.103	Indian Social Services--Child Welfare Assistance	14.3m	13.6m	11.5m	• FY 82 funding includes 2.1m supplemental add-on from other programs
15.144	Indian Child Welfare Act--Title II Grants	7.7m	9.6m	9.3m	
15.130	Indian Education--Assistance to Schools (the Johnson O'Malley Act)	25.9m	25.9m	29.5m	
DEPARTMENT OF JUSTICE					
16.516	Juvenile Justice and Delinquency Prevention--Formula Grants	0	43m	63.7m	• The administration has made no request but Congress is expected to vote some money for the program in FY 83
16.517	Juvenile Justice and Delinquency Prevention--Special Emphasis	0	14m	21m	

Table II (Cont'd)

FEDERAL CAT. NO.	PROGRAM	PROPOSED STATUS	FY LEVEL APPROPRIATIONS		NOTES
		FY 83	82	81	
DEPARTMENT OF JUSTICE - CON'T					
	National Institute Juvenile Justice and Delinquency Prevention	7.4m	7.4m	10.9m	
16.537	Urban Crime Prevention	*	*	*	* See HUD Urban Initiatives Anti-Crime Program
DEPARTMENT OF LABOR					
17.211	Job Corps	618m	585m	561m	• Consolidated into Part B Job Training Partnership Act
17.232	CETA-Titles II, B, C	*	1.1b	2.1b	* These programs have been combined with all other Federal employment and training programs into the Job Training Partnership Act * Estimated FY 83 cost 3.86 billion * 40% of funds must be spent on training persons 16-21
17.232	CETA-Title IV--SYEP	*	640m	839m	• Same as above
17.232	CETA-Title IV--YETP, YCCIP, and YIEP	*	576m	875m	• Same as above
17.234	Employment and Training--Indians and Native Americans	0	678m	725m	• Separate dollar figure never submitted for Indians and Native Americans

JUVENILE JUSTICE

Question. (a) Why do you think the Congress established the Office of Juvenile Justice and Delinquency Prevention as a separate office within the Department of Justice?

Answer. (a) The legislative history of the JJDP Act sets forth the issues concerning the administration of the JJDP Act by the Department of Justice. They are summarized as follows:

(i) The Department of Justice, through the Law Enforcement Assistance Administration (LEAA), had an administrative network of state planning agencies for planning and implementation purposes, which could be utilized for the JJDP block grant program.

(ii) LEAA had a lengthy history of funding juvenile justice and delinquency prevention programs through both its block and discretionary grant programs.

(iii) LEAA was thought to be a better agency to coordinate the new Act by tying in juvenile and criminal justice efforts with the larger social service and human resource networks of the states and units of local governments.

(iv) The social control of the juvenile and criminal justice systems needed to be applied in dealing with the serious offender and LEAA was seen as the only federal agency providing substantive assistance to police, courts and corrections in their efforts to deal with juvenile crime.

Question. (b) Do you believe that it is important to maintain the Office?

Answer. (b) Yes.

Question. (c) Do you believe that there should be a juvenile justice system separate from the adult criminal justice system? Why?

Answer. (c) Yes. Maturation through childhood and youth is a continuous process. Particularly for the younger and less serious offenders, the juvenile system can provide correction and services involving families, schools, and special supervision that may help keep children from entering the adult system later on. At the same time, there needs to be strong linkages between the juvenile and adult systems for handling the older, more serious, offenders, especially with regard to police operations, prosecutorial functions, and the utilization of prior offense records for judicial and correctional purposes.

REAUTHORIZATION

Question. (a) Recognizing that the Administration has yet to take a position on reauthorization of the Juvenile Justice and Delinguency Prevention Act beyond 1984, I would be interested in your personal views regarding reauthorization.

Answer. (a) The various issues concerning reauthorization of the juvenile justice program, including alternative approaches and possible modifications to the current Act, have been under internal review and discussion within the Department of Justice the past several months. As I indicated in response to earlier questions during my testimony, I came into the position of Acting Administrator of OJJDP with an open mind and without preconceptions regarding current programs and priorities. I have not yet been involved in discussions regarding reauthorizing at the Department of Justice, and have deliberately not taken a position on it until I had a sense of the way the program functions and of the issues involved. As I accomplish that, I do plan to provide input into the Department's position on reauthorization. My initial impression is that the Department should have an office which concerns itself with juvenile crime. Before this Office is reauthorized, however, a careful examination of its history must be made to determine its stengths and weaknesses.

Question. (b) In the wake of an investigation by the Subcommittee on Juvenile Justice last Congress, on February 17 I introduced the Dependent Children Protection Act of 1983, S. 520. It is designed to end the punitive detention of juveniles not adjudicated to have committed a criminal offense. Neglected and abused children and status offenders should not, in my view, be held in secure detention. It harms them, can lead to future delinquent and criminal activity and wastes limited space in detention facilities. Do you support this proposed legislation?

Question. (c) On February 17, I also introduced the Juvenile Incarceration Protection Act, S. 522, to prohibit the mixing of juveniles and adults in jail. The jail removal mandate was recently the topic of the hearing held before the Subcommittee on Juvenile Justice on February 24. Do you support this proposed legislation?

Question. (d) On February 17, I introduced the Juvenile Detention Employees Clearance Act, S. 521. It is intended to provide additional Federal assistance to the States to conduct criminal record checks on persons seeking employment at facilities maintained for juvenile detention, correction, care and treatment. Do you support this proposed legislation?

Answer. (b), (c) and (d) Although I support the objectives of the three bills as you have described in your questions, I have not had an opportunity to examine them in detail or to assess their potential ramifications to state and local governments. Until I have occasion to study the proposals more closely and review the position taken by the Department of Justice on them, it would be premature for me to express personal views on the bills.

ADDITIONAL RESPONSES OF ALFRED S. REGNERY TO ADDITIONAL QUESTIONS OF SENATOR ARLEN SPECTER

DEINSTITUTIONALIZATION OF STATUS OFFENDERS AND NONOFFENDERS

Question. How many juvenile non-offenders and status offenders are still being detained annually despite the deinstitutionalization mandate of the Juvenile Justice and Delinquency Prevention Act?

Answer. There are approximately 35,000 status offenders and non-offenders securely held on an annual basis. This is a reduction from approximately 200,000 securely held when the JJDP Act was enacted. This figure does not include those held in secure facilities less than 24 hours during weekdays and 72 hours over the weekend period (see response to next question below, for more detail). This figure also does not include those status offenders held in secure detention or correctional facilities because they committed offenses which constituted violations of valid court orders.

Question. Are juveniles detained for less than 24 hours included in the State reported statistics?

Answer. No. The specific statutory language of Section 223(a)(12) requires States to provide within three years that status offenders, unless they have committed offenses which do not constitute violations of valid court orders, and non-offenders shall not be placed in secure detention or secure correctional facilities.

Section 223(a)(15) requires the States to provide for an adequate system of monitoring facilities to insure deinstitutionalization is met and to report to OJJDP the results of such monitoring.

It is OJJDP's position that status offenders and non-offenders should never be held in secure facilities. However, in developing the monitoring regulations and in an effort to follow a "rule of reason", OJJDP recognizes there may be rare situations where short-term secure custody of accused status offenders and non-offenders are necessary. For example, detention for a brief period of time prior to formal juvenile court action for investigative purposes, for identification purposes, to allow return or proper custody to the juvenile's parents or guardian, or detention for a brief period of time under juvenile court authority in order to arrange for appropriate shelter care placement may be necessary.

Thus, for the purposes of monitoring compliance with the deinstitutionalization provision of the Act, the number of accused status offenders and non-offenders held in secure detention or correctional facilities does not include: (1) those held less than 24 hours following initial police contact, and (2) those held less than 24 hours following initial court contact. The 24-hour period does not include non-judicial days. This provision is meant to accommodate weekends and holdiays only.

OJJDP regulation contained in 28 CFR, Part 31, Subpart 31.303(i)(5)(i)(c), requires States to annually report the total number of accused status offenders and non-offenders held in any secure detention or correctional facility "for longer than 24 hours exclusive of non-judicial days." Thus, the information reported to OJJDP does not include status offenders and non-offenders held less than 24 hours during weekdays and those held up to an additional 48 hours (i.e., a maximum of 72 total hours) over the weekend.

It is unknown as to the extent that status offenders are securely detained for a period up to 24 hours on weekdays and 72 hours on weekends, since they are excluded from the reporting requirements.

Question. While substantial progress has been made toward deinstitutionalization with 35 States now reporting full compliance, can be really say this objective of the Juvenile Justice and Delinquency Prevention Act has "been attained"?

Answer. This is a difficult question to answer since there are: (1) various levels of compliance; (2) varying expectations as to what compliance actually encompasses; and, (3) different avenues of demonstrating compliance and/or progress toward complete deinstitutionalization of status offenders and non-offenders. For example, if the objective was looked at nationwide, it is evident that more than substantial progress has been achieved through the overall reduction in the use of secure incarceration for status offenders and the number of States found to be in full compliance pursuant to the policy and criteria for full compliance with de minimus exceptions. However, an individual facility, region, or State may not have accomplished the Act objective.

Question. Are you familiar with the March 22 GAO report "Improved Federal Effort Needed to Change Juvenile Detention Practices"? Do you accept its findings and recommendations?

Answer. I am familiar with the report and I generally accept the findings and am still reviewing the recommendations.

OJJDP has distributed 12,000 copies of its publication, Standards for the Administration of Juvenile Justice, and will continue distribution. A major portion deals with detention policy and practices. Meanwhile, the National Advisory Committee is planning to continue its considerations in which it will be supported by OJJDP research and data. Training in these standards and their relation to other sets of standards is being conducted under grant that extends into fiscal year 1984 to the American Correctional Association. Additional technical assistance in this area will be continued.

JAIL REMOVAL

Question. How many juveniles are held in adult jails and lockups annually?

Answer. Nobody really knows. The Bureau of Justice Statistics concluded, using Bureau of Census figures, that there were 1778 juveniles in adult jails on a given day in June of 1982. (This does *not* include lockups.)

In 1978, the University of Illinois estimated that during that year, 479,908 juveniles had passed through the doors of adult jails and lockups. That figure was based, however, on a response rate to a survey of less than 7 percent of the lockups, and therefore, may be inaccurate. Since there are more than 10,000 lockups in the United States, many in rural communities and small towns, the actual inmate census is considered to be virtually impossible to determine.

Question. Do you believe that the Juvenile Justice and Delinquency prevention Act's removal mandate "has been attained"?

Answer. The removal mandate, as provided in Section 223(a)(14) of the statute, must be attained by December 1985. Many states have made substantial progress in jail removal since the 1980 Amendments became law in December 1980; other states have not. Accordingly, it is impossible to generalize on progress toward attainment.

Question. What would you do as Administrator to ensure the fulfillment of the removal mandate?

Answer. I intend to continue OJJDP's efforts with priority and emphasis as necessary.

FORMULA GRANT IMPLEMENTATION

Question. Has the Office of Juvenile Justice and Delinqency Prevention published regulations providing for the implementation of the juvenile justice formula grants in fiscal year 1983?

Answer. Yes. See attached document—1983 Application Kit and published guidelines from Federal Register.

Question. Are you finding that as the deinstitutionalization mandate is being achieved, the states are using their juvenile justice block grant funding to accomplish other objectives of the Act such as jail removal, delinquency prevention, rehabilitation and treatment, programs to strengthen the family unit, programs to encourage youth to continue their education, deterrence of illegal juvenile gang activities, and delinquency programs for the learning disabled and other handicapped juveniles?

Answer. Yes.

Question. Do you favor continuing to distribute federal juvenile justice funding by means of block grants to the states? Why?

Answer. Yes. To continue this program is consistent with the Act and with the direction of this Administration allowing states flexibility to develop programs consistent with their needs.

Question. In your February 23, 1983, speech at the Tenth National Conference on Juvenile Justice, you alluded to "sufficient progress having occurred in the areas of removal and separation so that formula grant resources in many, if not most, states can now be redirected toward other program priorities." Would you elaborate on the progress toward removal of juveniles from adult jails and lockups to which you referred?

Answer. The sufficient progress to which I referred was that 29 states are in compliance with the interim mandate of separation, with another 22 states showing progress. Many states have made substantial progress in jail removal, and my staff believes that, therefore, some of the formula grant funds should be used for the many other mandates of the statute.

Question. Will the Office of Juvenile Justice and Delinquency Prevention seek to influence or control the "other program priorities" to which the formula grant resources are redirected?

Answer. I am now in the process of examining formula grant guidelines to determine that.

Question. How do you view the regulation promulgated December 31, 1982, regarding states allocating a minimum of 30 percent of their juvenile justice block grants to programs designed for serious and violent offenders?

Answer. This was not published as a requirement, but rather as a goal, though it is a goal with which I have no quarrel.

Attachment.

FISCAL YEAR 1983 APPLICATION KIT
FOR FORMULA GRANTS UNDER THE
JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

FOREWARD

The purpose of this kit is to provide appropriate state agencies with the instruction and forms needed to apply for formula grants under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. The kit is based on the requirements of the Act and should be used in conjunction with the draft implementing regulations, 28 CFR 31, Formula Grants for Juvenile Justice.

The JJDP amendments of 1980 reflect a Congressional objective of reducing the paper work requirements placed on states participating in the formula grant program. Accordingly the FY 1983 application for JJDP funds for States with approved 1982 Multi-Year Applications will consist of amendments to its previous year's submission and an annual action plan.

Any questions regarding use of this kit and requests for further information or assistance may be addresed to the Formula Grants and Technical Assistance Division of the Office of Juvenile Justice and Delinquency Prevention.

Charles A. Lauer

Charles A. Lauer
Acting Administrator
Office of Juvenile Justice
and Delinquency Prevention

A. Background

Participating states may apply through this application process for Juvenile Justice and Delinquency Prevention Formula Grants provided under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. All the forms and instructions in this kit are derived from the requirements of the Act and from the implementing regulations, Formula Grants for Juvenile Justice (28 CFR 31), published in the Federal Register on December 31, 1981 and August 16, 1982.

The amount of formula grant awards to states will depend upon annual appropriations by Congress.

B. FORMULA GRANT APPLICATION

For FY 1983, the complete formula grant application package is made up of three parts:

- Cover Sheet - SF 424/A-95 Clearinghouse Review
- Annual Action Plan
- Multi-Year Action Plan Amendments

The fiscal year 1983 application is due at OJJDP sixty days after final notification of fiscal year 1983 allocations. An original and one copy of the application should be mailed to the Office of the Comptroller, OJARS, 633 Indiana Avenue, NW, Washington, DC 20531.

1. Cover Sheet - SF-424/A-95 Clearinghouse Review

Until April 30, 1983, JJDP Plans are subject to Part III of OMB Circular A-95 and must be submitted to the Governor for review and comment. Clearinghouse review at the discretion of the Governor is encouraged. After April 30, 1983, Executive Order 12372 will become effective.

2. Annual Action Plan

The annual action plan is composed of an Attachment A, Technical Assistance needs, certified assurances, and SAG membership information. Below find details on each of these components.

Attachment A: A summary sheet which provides abreviated data as follows: (See PG 28 for a suggest format)

- State Program Designator
- Short title of the program
- Estimated funding level for the program in FY 1983
  note - include programs funded at the zero level

The first entry on the Attachment A will be program "P & A", Planning and Administration. OJJDP funds allocated to this program may not exceed 7½% of the total award. The second entry on the Attachment A will be "SAG", State Advisory Group. Each State must make available $11,250 to its SAG and each territory must make available $2,812. All program descriptions submitted as part of the composite application must be accounted for on Attachment A., i.e., the number of programs listed on Attachment A will correspond to the number of program descriptions presented.

In addition to providing a program description for both the planning and administration funds and the SAG allocation, provide program descriptions for all programs not previously presented in the 1982 application or amendments to the 1982 programs.

Certified Assurance: A checklist of JJDP requirements which the state certifies it has met (See PG 6).

Technical Assistance Needs: Those states wishing to receive technical assistance from OJJDP should submit the information requested in the narrative section of this application kit.

State Advisory Group: Provide membership information as shown on pages 12 and 13 in this Kit.

3. Multi-Year Action Plan

In an effort to simplify the formula grant application process Congress amended the JJDP legislation to allow states to submit a plan to cover a three-year period. The plan may be amended annually to cover new state programs or plans to address specific requirements in the Act.

The multi-year action is composed of: a plan to deinstitutionalize status offenders; a plan to ensure that the state adheres to the sight and sound separation mandate of the JJDPA, Section 223(a)(13); a plan to monitor jails and detention facilities pursuant to Section 223(a)(15) of the JJDPA; a plan for the removal of all juveniles from adult jails and lock-ups as specified in Section 223(a)(14) of of the JJDPA; an analysis of juvenile crime problems and delinquency prevention needs; and, standard program descriptions.

OMB Approval No. 29-R0218

FEDERAL ASSISTANCE

1. TYPE OF ACTION (*Mark appropriate box*)
☐ PREAPPLICATION
☐ APPLICATION
☐ NOTIFICATION OF INTENT (Opt.)
☐ REPORT OF FEDERAL ACTION

2. APPLICANT'S APPLICATION
a. NUMBER
b. DATE *Year month day* 19

3. STATE APPLICATION IDENTIFIER
a. NUMBER
b. DATE ASSIGNED *Year month day* 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name :
b. Organization Unit :
c. Street/P.O. Box :
d. City :
e. County :
f. State :
g. ZIP Code:
h. Contact Person (*Name & telephone No.*) :

5. FEDERAL EMPLOYER IDENTIFICATION NO.

6. PROGRAM (*From Federal Catalog*)
a. NUMBER ☐☐●☐☐☐
b. TITLE

7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT

8. TYPE OF APPLICANT/RECIPIENT
A–State
B–Interstate
C–Substate District
D–County
E–City
F–School District
G–Special Purpose District
H–Community Action Agency
I–Higher Educational Institution
J–Indian Tribe
K–Other (*Specify*):
Enter appropriate letter ☐

9. TYPE OF ASSISTANCE
A–Basic Grant
B–Supplemental Grant
C–Loan
D–Insurance
E–Other
Enter appropriate letter(s) ☐☐

10. AREA OF PROJECT IMPACT (*Names of cities, counties, States, etc.*)

11. ESTIMATED NUMBER OF PERSONS BENEFITING

12. TYPE OF APPLICATION
A–New
B–Renewal
C–Revision
D–Continuation
E–Augmentation
Enter appropriate letter ☐

13. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

14. CONGRESSIONAL DISTRICTS OF:
a. APPLICANT
b. PROJECT

15. TYPE OF CHANGE (*For 12c or 12e*)
A–Increase Dollars
B–Decrease Dollars
C–Increase Duration
D–Decrease Duration
E–Cancellation
F–Other (*Specify*):
Enter appropriate letter(s) ☐☐☐

16. PROJECT START DATE *Year month day* 19

17. PROJECT DURATION *Months*

18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY ▶ *Year month day* 19

19. EXISTING FEDERAL IDENTIFICATION NUMBER

20. FEDERAL AGENCY TO RECEIVE REQUEST (*Name, City, State, ZIP code*)

21. REMARKS ADDED
☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT ▶

a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.

b. If required by OMB Circular A-95 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached:

	No response	*Response attached*
(1)	☐	☐
(2)	☐	☐
(3)	☐	☐

23. CERTIFYING REPRESENTATIVE
a. TYPED NAME AND TITLE
b. SIGNATURE
c. DATE SIGNED *Year month day* 19

SECTION III—FEDERAL AGENCY ACTION

24. AGENCY NAME

25. APPLICATION RECEIVED *Year month day* 19

26. ORGANIZATIONAL UNIT

27. ADMINISTRATIVE OFFICE

28. FEDERAL APPLICATION IDENTIFICATION

29. ADDRESS

30. FEDERAL GRANT IDENTIFICATION

31. ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. DEFERRED
☐ e. WITHDRAWN

32. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

33. ACTION DATE ▶ *Year month day* 19

34. STARTING DATE *Year month day* 19

35. CONTACT FOR ADDITIONAL INFORMATION (*Name and telephone number*)

36. ENDING DATE *Year month day* 19

37. REMARKS ADDED
☐ Yes ☐ No

38. FEDERAL AGENCY A-95 ACTION

a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provisions of Part 1, OMB Circular A-95, it has been or is being made.

b. FEDERAL AGENCY A-95 OFFICIAL (*Name and telephone no.*)

424-101

STANDARD FORM 424 PAGE 1 (10-75)
Prescribed by GSA, Federal Management Circular 74-7

CERTIFIED ASSURANCES

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

The checklist has been developed to reduce the amount of paperwork required by applicant States in the JJDP Act. States need only certify that the requirements cited below have been met. In cases where requirements cannot be certified, justification must be presented along with a statement as to when the omission will be corrected. Refer to Part 31, Subpart D, 28 CFR, Chapter I.

1. Plan Supervision, Administration and Implementation — Yes No

   Pursuant to Section 223(a)(1) and (2) and Section 261(c) of the JJDP Act, the State applicant assures that it is the sole agency for plan administration and has the authority to carry out the mandates of the JJDP Act. (Note: Henceforth, CJC refers to the Criminal Justice Council or other approved alternative agency as provided by Section 261(c) of the JJDPA). ____ ____

2. Planning and Administration Funds

   Pursuant to Section 222(c) of the JJDP Act, the Council has indicated on Attachment A the amount of planning and administration funds allocated to the State and has indicated below the amount that units or combinations of units of general local government will use. Such funds shall not exceed 7½ % of the total JJDP award and must be matched dollar for dollar in cash. ____ ____

   Amount of these funds to local government: ____________

3. Juvenile Justice Advisory Group. Pursuant to Section 223(a)(3) of the JJDP Act, the Council shall provide:

   (a) A list of all curent advisory group members (use the attached format), including their respective dates of appointment and how each member meets the membership requirements specified in this Section of the Act. Members appointed prior to their 24th birthday (youth members) are identified as well as those members who also serve on the CJC. ____ ____

   (b) An Assurance that three members who have been or are now under the jurisdiction of the juvenile justice system have been appointed to the advisory group. ____ ____

   (c) The State assures that it complies with the requirements of Section 222(d) of the JJDP Act. ____ ____

4. Consultation with and Participation of Units of General Local Government. Pursuant to Section 223(a)(4) and(6) of the JJDP Act, the State assures that: Yes No

(a) The Chief Executive Officer of such a unit has assigned responsibility for the preparation and administration of its part of the Juvenile Justice Plan. ____ ____

(b) The State recognizes, concurs with, and incorporates the needs of such units into the Juvenile Justice Plan. ____ ____

5. Participation of Private Agencies

Pursuant to Section 223(a)(9) of the JJDP Act, the State assures that private agencies have been consulted and allowed to participate in the development and execution of the Juvenile Justice Plan. ____ ____

6. Pass Through Requirement

Pursuant to Section 223(a)(5) of the JJDP Act, the State must specify the amount and percentage of funds to be passed through to units of general local government and to local private agencies. For purposes of this requirement, local private agency is defined as a private non-profit agency or organization that provides program services within identifiable units or combination of units of general government. ____ ____

Pass-Through: $ ____________. (________%) For additional information on this requirement, see OJJDP Guideline 4040.4

7. Right of Privacy for Recipients of Services

Pursuant to Sections 223(a)(17) and 229 of the JJDP Act, the State assures that they have established procedures to ensure that programs funded under the JJDP Act shall not disclose program records containing the identity of individual juveniles. Exceptions to this requirement: (1) authorization by law; (2) the consent of either the juvenile or his legally authorized representative; or, (3) justification that otherwise the functions of this title cannot be performed. Under no circumstances may public project reports or findings contain names of actual juveniles. ____ ____

8. Equitable Arrangements for Employees Affected by Assistance in this Act

Pursuant to Section 223(a)(18) of the JJDP Act, the State assures that it has established all terms and conditions for the protection of employees affected by the JJDP Act. ____ ____

9. Equitable Distribution of Juvenile Justice Funds and Assistance to Disadvantaged Youth — Yes — No

Pursuant to Section 223(a)(7) and (16) of the JJDP Act, the State assures that:

(a) The State will adhere to procedures for the equitable distribution of JJDP Act formula grant money. ____ ____

(b) The detailed study of needs analyzes the needs of disadvantaged youth and that assistance will be available equitably. ____ ____

(c) All subgrantees and contractors shall comply with General Grant Conditions and Assurances regarding non-discrimination. ____ ____

(d) It has developed and adheres to procedures for filing and considering grievances arising under this section. ____ ____

10. Analytical and Training Capacity

Pursuant to Section 223(a)(11) and (21) of the JJDP Act, the State assures that it will conduct research, training and evaluation activities. ____ ____

11. Non-Discrimination. The CJC and all its subgrantees will comply with the following non-discrimination laws:

- Section 815(c) of the Justice System Improvement Act (JSIA), made applicable by Section 262(a) of the JJDP Act, as amended and its implementing regulations found at 28 CFR 42.201, et seq., and 28 CFR 42.301, et seq.
- Title VI of the Civil Rights Act of 1964, and its implementing regulations found at 28 CFR 42.101, et. seq.
- Section 504 of the Rehabilitation Act of 1973, as amended, and its implementing regulations, 28 CFR 42.501 et seq.
- The Age Discrimination Act of 1975, as amended, and its implementing regulations.
- Executive Order 12138, 44 F.R. 29637 (May 22, 1979), requiring recipients of federal financial assistance to take appropriate affirmative action in support of women's business enterprise.
- Title IX of the Education Amendments of 1972. ____ ____

12. An amended Plan for implementing the mandates prescribed by the Juvenile Justice and Delinquency Prevention Act and for meeting other Act requirements, as set out on the following pages, is appended to this checklist. Yes ____ No ____

13. Advanced Techniques

Pursuant to Section 223(a)(10) of the JJDPA, the CJC assures that at least 75% of the JJDPA funds support advanced techniques as enumerated in this section. ____ ____

14. The State assures and certifies that the CJC, its subgrantees, and contractors will comply with regulations of the Department and other applicable Federal laws, orders and circulars as specified and described in greater detail in Appendix A to this Kit. ____ ____

15. It is understood that this grant may be terminated or fund payments discontinued by OJJDP where it finds a substantial failure to comply with the provisions P.L. 93-415, as amended, or regulations promulgated thereunder, including these assurances of application obligations, but only after notice and hearing and pursuant to all procedures set forth in Section 803. of P.L. 96-157. ____ ____

16. The applicant assures and certifies that the CJC, its subgrantees and contractors, will comply with the provisions of the Omibus Crime Control and Safe Streets Act of 1968, P.L. 90-351 as amended by P.L. 91-644, P.L. 93-83, P.L. 93-415, P.L. 94-430, P.L. 94-503, and P.L. 96-157 that are applicable to the JJDP Act; and with the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, P.L. 93-415, as amended by P.L. 94-503, P.L. 95-115, and P.L. 96-509 for activities funded under the Act. ____ ____

17. Fiscal control and fund accounting procedures which assure proper disbursement of, and accounting for, grant funds and required non-Federal expenditures have been established by the grantee. (This requirement applies to funds disbursed by units of local government and entitlement areas as well as to funds disbursed directly by the Council). Accounting procedures provide for accurate and timely recording of receipt of funds by source, or expenditures made from such funds, and unexpended balances. Controls are adequate to insure that expenditures charged to grant activities are for allowable purposes and documentation is readily available to verify that such charges are accurate. Except when inconsistent with Federal requirements, State procedures and practices apply to funds disbursed by such units. Treatment of specific items and determinations of the allowability of costs are in accordance with OJARS Financial Guide, M 7100.1B, Chpt. 8. All required records shall be maintained until an audit is completed and all questions arising therefrom are resolved, or three years after completion of a project. ____ ____

		Yes	No
18.	Provisions have been made for fund accounting, auditing, monitoring, and such evaluation procedures as may be necessary to keep such records, as prescribed by OJARS to assure fiscal control, proper management, and efficient disbursement of funds received under the Act.	____	____
19.	The State assures that pursuant to Section 227(c) of the JJDP Act, funds paid pursuant to Section 223(a)(10)(D) and Section 224(a)(7), to any public or private agency, organization, or institution or to any individual (whether directly or through a State criminal justice council) shall not be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence a Member of the Congress or any other Federal, State, or local elected official to favor or oppose any Acts, bills, resolutions, or similar legislature or any referendum, initiative, constitutional amendment, or any similar procedure by the Congress, any State legislature, any local council, or any similar governing body, except that this subsection shall not preclude such funds from being used in connection with communications to Federal, State or local elected officials, upon the request of such official through proper official channels, pertaining to authorization, appropriation, or oversight measures directly affecting the operation of the program involved.	____	____
20.	Pursuant to Section 402(b)(1) and (2) of the Justice System Improvement Act (JSIA) the State assures that a copy of the law establishing the criminal justice council is available for review. Further, the State assures that a current listing of the members of the council is also available for review and that the membership is in compliance with Section 402(c)(2) of the JSIA.	____	____

21. Civil Rights: The applicant assures that the following civil rights responsibilities have been met:

- o Designate a civil rights contact person who has lead responsibility for insuring that all applicable civil rights requirements, assurances, and conditions are met and who shall act as liaison in all civil rights matters with OJJDP and the OJARS' Office of Civil Rights Compliance (OCRC);

- o Every applicant required to formulate an EEOP in accordance with 28 CFR 42.301 et seq., shall submit a certification to the State that it has an EEOP on file;

- o Every criminal or juvenile justice agency, including Grantees applying for a grant of $500,000 or more shall submit a copy of its EEOP (if required to maintain one under 28 CFR 42.301, et. seq.) to OCRC at the same time it submits its application to the State;

Yes No

- Inform the public and subgrantees of affected persons' rights to file a complaint of discrimination to OCRC for investigation; and
- Cooperate with OCRC during compliance reviews of recipients located within the State.
- Comply, and that its subgrantees and contractors will comply with the requirement that, in the event that a Federal or State court or administration agency makes a finding of discrimination on the basis fo race, color, religion, national origin, or sex (after a due process hearing) against a State or a subgrantee or contractor, the affected recipient or contractor will forward a copy of the finding to OCRC. ____ ____

22. Concentration of State Effort

The State Assures that pursuant to Section 223(a)(8)(c) of the JJDP Act, a plan for the concentration of State efforts as they relate to the coordination of all State juvenile delinquency programs with respect to overall policy and development of objectives and priorities for all State juvenile delinquency programs and activities, is on file. ____ ____

23. Annual Performance Report

The State assures that pursuant to Section 223(a) and 233(a)(21) of the Act it shall submit by December 31, 1982, an annual performance report. See page 14 of this Kit for areas to be addressed. ____ ____

24. Serious and Violent Juvenile Offender Emphasis

Pursuant to Sections 101(a)(8), 223(a)(10), and 223(a)(22) of the Act and 28 CFR 31.303(e), the State has identified and specified FY 1983 Formula Grant Funds allocated to those programs and projects designed to address this target population. ____ ____

CERTIFICATION

I certify that the programs proposed in this application meet all the requirements of the JJDP Act, that all the information presented is correct, that there has been appropriate coordination with affected agencies, and that the applicant will comply with all provisions of the Act and all other Federal laws. By appropriate language incorporated in each grant, subgrant or other document under which funds are to be dispersed, the undersigned shall assure that the applicable conditions above apply to all recipients of assistance.

Authorized Official

Date

The State Advisory Group Membership form has been designed to simplify state reporting requirements.

Colum 1:

List the names of each SAG member beginning with the Chairperson and, if applicable, other SAG members of the State Supervisory Board (place an * after each of these names) and continue the list with the remaining SAG members.

Colum 2:

Report on each member's representational affiliation as follows:

A - locally elected official
B - represent local government
C - law enforcement police
D - corrections
E - juvenile justice agency
F - juvenile/family court judge
G - public agency
H - private agency
I - business group
J - youth worker
K - person with special knowledge
L - organization representing employees affected by Act
M - other

Colum 3:

Place an x in this column if the individual listed is a full time Federal/State/Local government employee.

Column 4:

Place an x in this column if the individual listed is a youth member, (was less than 24 years old at the time of appointment to SAG).

Column 5:

List the date of each members' appointment to the SAG.

Column 6:

List the city, or town of each members' residence.

Membership requirements may be found in Section 223(a)(3) of the JJDPA.

[illegible]
[illegible]

Name	Represents	F/T Govt. empl.		Date of appt. to SMI	City/Town Residence

Totals

Technical Assistance

In an effort to improve the technical assistance delivery process, the State Council shall:

A. Formulate, based upon their juvenile justice system needs assessment, a description of the constraints which would effect the State's ability to fully achieve the objectives of the Act and prioritize the types(s) of technical assistance which would enable the State to facilitate the implementation of those JJDP Mandates and Programs outlined within the State Plan and which would be consistant with one or more of the JJDP's FY 1983 TA goal areas as follows:

   1. To preclude the initial commission of all type of juvenile offenses, including minor, serious, and violent acts by juveniles and status offenses.

   2. To facilitate the development and maintenance of alternatives to the juvenile justice system.

   3. To improve the quality of the juvenile justice system in the areas of administration, processing, and treatment in order to affect systemic change.

B. Identify, where able, the specific technical assistance desired; the intended recipient; the expected TA provider, i.e., CJC staff, in-state contractor, OJJDP staff, OJJDP technical assistance contractor; and the proposed timetable for receipt of technical assistance.

C. Outline the strategy the CJC will follow in order to assess the impact the assistance has had on project or system change.

Annual Performance Report

Pursuant to Section 223(a) and Section 223(a)(21) the State shall submit an annual performance report to OJJDP by December 31, 1982. The report should address:

(1) Progress in Program Implementation. The State shall report on its progress in the implementation of programs, as described in the three year plan. The performance indicators will serve as the objective criteria for a meaningful assessment of progress toward achievement of measurable goals.

(2) Compliance with State Plan Requirements. The State should also describe the status of compliance with each of the following requirements. Compliance is to be measured against the assurances made in the three year plan and any subsequent modifications.

   (i) Funding. Indicate the amount of funds that have been awarded, the programs they have applied to, the percentage used for advanced techniques, and the percentage passed through to units of local government.

Describe how funds have been equitably distributed within the State.

Describe how funds have been equitably distributed to deal with disadvantaged youth, as required by Section 223(a)(16), specifying the number of disadvantaged youth who participated in programs supported with formula funds.

(ii) State Concentration/Coordination of Effort. Describe the State's progess in implementation of coordination of its plan for juvenile delinquency programs within the State.

(iii) Consultation. Describe how units of general local government and private agencies have been involved in the development and implementation of the State plan.

(iv) Development of Research, Training and Evaluation Capacity. Describe efforts to develop an adequate research, training and evaluation capacity within the State.

(v) Briefly describe the State's progress in implementing its plan for compliance with Section 223(a)(12)-(14), as outlined in the multi-year plan for achieving compliance with these requirements.

MULTI YEAR PLAN AMENDMENTS

In developing their 1982 application, States were requested to complete a three year plan addressing certain requirements of the Act and for program descriptions for formula grant funding covering a three-year period. States are authorized to amend these plans if circumstances should dictate or add new programs should the juvenile crime analysis indicate new directions for funding. The following areas are offered as a summary of major issues to be reviewed to determine if amendments are necessary.

1. Deinstitutionalization of Status Offenders and Non-Offenders

   Refer to 28 CFR 31.303(f) as published in the Federal Register on December 31, 1981 for plan elements.

2. Contact with Incarcerated Adults

   Refer to 28 CFR 31.303(g) for plan elements.

3. Removal of Juveniles from Adult Jails and Lock-Ups

   Refer to 28 CFR 31.303(h) for plan elements.

4. Monitoring of Jails, Detention Facilities, and Correctional Facilities

   Refer to 28 CFR 31.303(i) for plan elements and information to be collected and reported. The 1982 Monitoring Report must be submitted by December 31, 1982.

5. Juvenile Crime Analysis and Program Description

A revision to the State Crime Analysis is necessary if programs not presented in the 1982 application are to receive formula grant funding during fiscal year 1983. Elements of the juvenile crime analysis and program decriptions follow:

A. Juvenile Crime Analysis

Pursuant to section 223(a)(8)(A) and (B) the State shall conduct an analysis of its juvenile crime problems and juvenile justice and delinquency prevention needs. The product of the analysis shall be a series of problem statements that reflect an analysis of the available data, the monitoring reports, and requirements of the Act and which provide the basis for developing juvenile justice programs for funding.

1. Analysis Components. The analysis should include the following:

(i) A description of the structure and functions of units of the juvenile justice system and description of the flow of youth through the system, on an annual basis. The descriptive flow should include a summary of the number and characteristics (age, sex, nation origin, and race) of youths within the State, and a summary of the number and characteristics (offense, age, sex, national origin, and race) of youths handled, (including arrests and petitions, by each unit of the juvenile justice system) and disposition made by each (including the number and characteristics of juveniles within each dispositional category).

(ii) An analysis of the nature of the delinquency problem within the State. This analysis should include unemployment rates, school dropout, suspension and expulsion rates, and other conditions considered or determined by the State to be relevant to delinquency prevention programming.

(iii) A description of major programs operated outside of the formal juvenile justice system which are designed to impact directly on delinquency reduction, control, or prevention. The description should include the structure, objectives, number and descriptions of youths served, program costs, and sources of funds.

2. Product

(i) The product of the analysis is a series of brief written problem statements set forth in the application that define and describe the priority problems.

(ii) A problem statement, as used herein, is defined as a written presentation which describes the magnitude, seriousness, rate of change, persons affected, and temporal aspects of a problem using qualitative and quantitative information. It identifies the nature, extent, and effect of system response, makes projections based on historical inferences and rigorously attempts to establish the origins of the problem. A problem statement is a clear and succinct summary which reflects the results of the analysis undertaken. It does not necessarily represent all the analysis undertaken, or all data collected for any given priority problem area.

B. Standard Program Description

Applications are to include descriptions of programs to be supported with Juvenile Justice Act formula grant funds for a three-year period.

(i) Organization of Programs. Programs are groupings of projects with similar project designs and objectives.

(ii) Program Description. Descriptions should not be more than three or four pages in length, but this may vary. Each item below must be addressed for all programs.

(A) Title
(B) Description of Program

(1) Program Objectives. Objectives are specific descriptive statements of the expected program performance and its impact on the identified problem. These must be quantified where possible and must be related to the measure used to describe the problem in the problem statement.

(2) Summary of Activities Planned and Services Provided. This part of the program description must summarize what agencies will implement the program, where and when the activities will take place, what services will be provided, and who will benefit from the services.

(3) Budget. Total Federal funds requested from JJDP allocations must be presented, along with any expected state, local or private funds. Indicate the number of subgrants and the dollar range, as well as anticipated subgrantees (if known). Include minimum duration of each program and minimum number of years that funding may be requested and received for projects. Once Congressional appropriations are final, specific budget figures must be submitted.

(4) Relationship to Similar Programs. The program description must indicate how the program relates to other similar State or local programs directed at the same or similar problems.

C. Performance Indicators

A list of performance indicators must be developed and set forth for each program. These indicators show what data will be collected at the program level to measure whether objectives and performance goals have been achieved and should relate to the measures used in the problem statement and statement of program objectives.

Format Exhibit I shows the standard format setting forth priority problems and programs in the annual plan.

Exihibit I - Standard Format for Program Descriptions

Problem Statements: Statement of problem including an indication of its priority.

Program: Description of program developed to deal with the problems stated above.

1. Title
2. Description
    a. Objectives
    b. Summary of Activities Planned
    c. Budget
    d. Relationship to Similar Programs
3. Performance Indicators

APPENDIX A

GENERAL GRANT CONDITIONS AND ASSURANCES

The applicant gives assurances and certifies with respect to the grant that the State Criminal Justice Council, its subgrantees and contractors will comply with the following requirements:

1. REPORTS. Each grantee shall submit such reports as the Office of Juvenile Justice and Delinquency Prevention (OJJDP) shall reasonably request. State Criminal Justice Councils shall submit such financial reports as may be required on forms approved by OMB and prescribed by OJARS. Each Council shall be expected to give evidence of compliance with applicable requirements of 28 CFR 31 and the requirements of the Justice System Improvements Act of 1979 (hereinafter referred to as "the Act') that are applicable to the JJDP Act of 1974, as amended. Each State Council shall produce such records and documentation and prepare such reports as OJJDP shall reasonbly request in the execution of its monitoring, stewardship and evaluation responsibilities.

2. INSPECTION AND AUDIT. Accounts and records of the state agency and local units of government and all other recipients of assistance under this grant, whether by direct grant or contract or by subgrant or subcontract from primary grantees or contractors, which disburse or utilize grant funds, must be accessible to authorized Federal and state officials for the purpose of audit examination. Notice of accessibility must be incorporated in each grant, subgrant, contract or other documents under which funds are to be disbursed. Where permitted by state constitutional provisions, an annual or biannual audit of the planning and action subgrant program must be accomplished by an appropriate state audit agency, State Council audit staff or a reputable public accounting firm. To the extent that state and local audit systems are determined by OJARS to be adequate to ensure fiscal accountability, they will be relied upon in lieu of regular Federal audit of grantee and subgrantee accounts. The Administration shall adhere, in all regards, to the principles enunciated in OMB Circular No. A 73, "Audit of Federal Grants in Aid to State and Local Governments." For more detailed information refer to OJARS M.7100.1B.

3. POLITICAL ACTIVITY. The restrictions of the Hatch Act, Pub. L. 93-443, 5 U.S.C. Chapter 73, Subchapter III, (as amended), concerning the political activity of government employees are applicable to State Criminal Justice Council staff members and other State and local government employees whose principal employment is in connection with activities financed, in whole or in part, by Title I grants. Under a 1975 amendment to the Hatch Act, such State and local government employees may take an active part in political management and campaigns except they may not be candidates for office.

4. DISCRIMINATION PROHIBITED. No person shall, on the grounds of race, religion, color, national orgin or sex, be excluded from participation in, be denied the benefits or, be otherwise subjected to discrimination under, or denied employment in connection with, grants awarded pursuant to the Act, the Juvenile Justice Act (Pub. L. 93-415, as amended), and the implenting regulations 28 CFR part 42 subparts D and E, or any project, program or activity or subgrant supported or benefiting by this grant. The grantee must comply with the provisions and requirements of Title VI of the Civil Rights Act of 1964 and its implementing regulations 28 CFR 42.101 et. seq. The grantee must further comply with Section 504 of the Rehabilitation Act of 1973, as amended, and its implementing regulations; the Age Discrimination Act of 1973, as amended, and its implementing regulations and Title IX of the Education Amendments Act of 1974.

5. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM. Each grantee certifies, that it has executed and has on file, an Equal Employment Opportunity Program which conforms with the provisions of 28 CFR Section 42.301, et seq., Subpart E, or that in conformity with the foregoing regulation, no Equal Employment Opportunity Program is required.

6. RELEASE OR INFORMATION. All records, papers and other documents kept by recipients of OJJDP funds, and their subgrantees and contractors, relating to the receipt and disposition of such funds, are required to be made available to the Office. These records and other documents submitted to OJJDP and its grantees pursuant to other provisions of the Act, including plans and application for funds, are required to be made available by OJJDP under the terms and conditions of the Federal Freedom of Information Act, 5 USC 552.

7. INFORMATION SYSTEMS. With respect to programs related to criminal justice information systems, the grantee agrees to comply with the provisions of 28 CFR, Part 20 governing the protection of the individual privacy and the insurance of the integrity and accuracy of data collection. The grantee further agrees:

   a. That all computer software produced under this grant will be made available to the OJJDP for transfer to authorized users in the criminal justice community without cost other than that directly associated with the transfer. Systems will be documented in sufficient detail to enable a competent data processing staff to adapt the system, or portions thereof, to usage on a computer of similar size and configuration, of any manufacturer.

   b. To provide a complete copy of documentation, upon receipt, to the Bureau of Justice Statistics. Documentation will include but not be limited to system description, operating instruction, program maintenance instructions, input forms, file descriptions, reports formats, program listings and flow charts for the system and programs.

c. That whenever possible all application programs will be written in ANS COBOL in order that they may be transferred readily to another authorized user. Where the nature of the task requires a scientific programming language, ANS FORTRAN should be used.

d. To avail himself , to the maximum extent possible, of computer software already produced and available without charge. Justice Statistics publications and System Specialists should be consulted.

8. CONFIDENTIALITY OF RESEARCH INFORMATION. Pursuant to Section 229 of the Act, research information identifiable to an individual, which was obtained through a project funded wholly or in part with OJJDP funds, shall remain confidential and copies of such information shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding. 28 CFR Part 22.

9. PUBLISHED MATERIAL. All published material and written reports submitted under this grant or in conjunction with contracts under this grant must be originally developed material unless otherwise specifically provided in the grant or contract document. When material, not originally developed, is included in the report it must have the source identified. This identification may be in the body of the report of by footnote. This provision is applicable when the material is in a verbatim or extensive paraphase format.

10. ALLOCATION AND MATCH REQUIREMENTS FOR JUVENILE JUSTICE ACT PROGRAMS. The Criminal Justice Council will comply with the provisions of Pub. L. 93-415, as amended, concerning Part B formula grant funds.

a. Not more than 7.5% of the total annual allotment of such funds shall be utilized to develop a state plan and to pay that portion of expenditures which are necessary for efficient administration, including monitoring and evaluation. These funds are to be matched on a dollar for dollar basis.

b. The State shall make available needed funds for planning and administration to units of general local government or combinations thereof within the State on an equitable basis.

c. In the absence of a waiver, the State shall expend at least 66 2/3% of such funds for programs of local government.

d. Not less than 75% of such funds shall be used for advanced techniques as delineated in Section 223(a)(10) of the Act.

e. Five per cent of the minimum annual allotment to any state shall be available to assist the Advisory Group established under Section 223(a)(8).

f. Financial assistance extended under the provision of the JJDP Act shall be 100% of approved costs of any program or activity with the exceptions of planning and administration funds and any construction activities.

11. CONSTRUCTION (JUVENILE JUSTICE ACT). The Criminal Justice Council certifies that financial assistance for construction programs and projects shall be limited to not more than 50% of the cost of construction. In addition, construction using funds available under the Juvenile Justice Act is limited to innovative community-based facilities for less than twenty persons. All such programs and projects shall be subject to guidelines promulgated by the Administration.

12. NATIONAL ENVIRONMENTAL POLICY OF 1969. Pub. L. 91-190, 42 USC 4321, et. seq. Any application for OJJDP funds involving those actions listed in 23 CFR 19.6 shall include an environmental evaluation. The State will circulate the environmental evaluation through the State and Local Clearinghouse and concurrently send it to OJJDP. OJJDP, after allowing time for comment, shall decide whether to issue a negative declaration or require the preparation of an Environmental Impact Statement. If an Environmental Impact Statement is required, the CJC will ordinarily be required to prepare a draft if the project is being funded with discretionary money, the CJC may be requested to prepare the draft Environmental Impact Statement. Procedures for compliance are outlined in the Environmental Procedures Handbook, HB 4061.

13. NATIONAL HISTORIC PRESERVATION ACT OF 1966. Pub. L. 89-665, 16 USC 470, et. seq. The Criminal Justice Council shall consult with the State Historic Preservation Officer to determine if undertakings may have an effect on properties listed in the National Register of Historic Places, or on properties eligible for inclusion. The CJC shall notify OJJDP of the possible effect of the undertaking and follow the procedures outlined in the Environmental Procedures Handbook, HB 4061.

14. FLOOD DISASTER PROTECTION ACT OF 1973. Pub. L. 93-234, 42 USC s4001, et. seq. OJJDP will not approve any financial assistance for contruction purposes in any area that has been identified by the Secretary of HUD as an area having special flood hazards unless the community in the hazardous area is then participating in the National Flood Insurance Program.

15. CLEAN AIR ACT, Pub. L. 88-206, 42 USC s1857, et. seq., and FEDERAL WATER POLUTION CONTROL ACT AMENDMENTS OF 1972 Pub. L. 92-500, 33, USC s1251, et. seq. (and Executive Order 11738). In accordance with the provisions of the Clean Air Act, the Federal Water Pollution Control Act and Executive Order 11738, subgrants and contracts will not be made with parties convicted of offenses under these laws. Procedures for compliance with these regulations are outlined in the Environmental Procedures Handbook, HB 4061.

16. SAFE DRINKING WATER ACT. Pub. L. 93-523, 42 USC s3001, et. seq. If the Administrator of the Environmental Protection Agency determines that an area has an aquifier (a water-bearing stratum of permeable rock, sand or gravel) which is the sole or principal source of drinking water for an area, and which if contaminated would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After publication of such notice, no commitment of Federal financial assistance (through a grant, contract, loan or otherwise) may be entered into for any project which the EPA Administrator determines may contaminate such an aquifier. Any prospective subgrantee of OJJDP funds shall assure that the project will have no effect on an aquifier so designated by the EPA Administrator.

17. ENDANGERED SPECIES ACT OF 1973. Pub. L. 93-205, 16 USC s1531, et. seq. The Secretary of Interior shall publish in the Federal Register, and from time to time he may be regulations revise, a list of species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name and shall specify with respect to each such specie over what portion of its range it is endangered or threatened. Any prospective recipient of OJJDP funds shall certify in writing prior to grant award that the proposed action will not jeopardize the continued existence of an endangered specie or a threatened specie or result in the destruction or modification of the habitat of such a specie.

18. WILD AND SCENIC RIVERS ACT. Pub. L. 90-542, 16 USC 1271, et. seq. OJJDP must notify the Secretary of the Interior and, where National Forest lands are involved, the Secretary of Agriculture, or any activities in progress, commenced or resumed which affect any of the rivers specified in the Wild and Scenic Rivers Act. Any prospective grantee or subgrantee of OJJDP grant funds will certify in writing that OJJDP will be notified if any of the designated rivers are or will be affected by any program or project.

19. FISH AND WILDLIFE COORDINATION ACT. Pub. L. 85-624, 16 USC s661, et. seq. OJJDP must notify the Fish and Wildlife Service of the Department of Interior and the head of the state administrative agency exercising administration over the wildlife resources of the State wherever the waters of any stream of other body of water are proposed or authorized to be diverted or controlled by OJJDP, a grantee, or subgrantee. Any prospective recipient of OJJDP grant funds will certify that OJJDP will be notified in any of the action specified in 16 USC s662(a) are anticipated.

20. HISTORICAL AND ARCHAEOLOGICAL DATA PRESERVATION ACT. Pub. L. 93-291, 16 USC s469, et. seq. Any prospective recipient of OJJDP funds shall notify OJJDP if the funded activity may cause irreparable loss or destruction to significant historical or archaeological data. OJJDP will then notify the Secretary of the Interior who shall conduct a survey and investigation of the area which may be affected and recover and preserve such data.

21. COASTAL ZONE MANAGEMENT ACT OF 1979. Pub. L. 92-583, 16 USC 1451, et. seq. Each OJJDP supported activity which directly affects the Coastal Zone shall be conducted in a manner, which to the maximum extent feasible, is consistent with the approved state management program for the protection of the Coastal Zone. Every applicant submitting an application for grant funds supporting programs affecting land or water uses in the Coastal Zone shall attach the views of the appropriate state or local agencies on the relationship of the proposed activity to the approved management program. This applies to subgrant applications submitted to the CJC as well as to discretionary grant applications. Such applications shall be submitted accordance with the provisions of Title IV of the Intergovernment Cooperation Act of 1968, Pub. L. 90-577.

22. ANIMAL WELFARE ACT OF 1970, Pub. L. 91-579, 7 USC s2131, et seq. This act establishes recordkeeping and animal treatment standrards for schoolds, institutions, organizations and persons that use or intend to use live animals in research, tests or experiments, and that receive Federal funds for the purpose of carrying out research, tests or experiments. No grant of contract for this type of purpose may be made until the grantee or contractor assures compliance with the provisions of the Animal Welfare Act of 1970.

23. IMPOUNDMENT CONTROL ACT OF 1974, Pub. L. 93-344, 31 USC s1401, et seq. Specific procedures are provided for recissions and deferrals of budget authority when Federal funds are involved, and assurance msut be provided that whenever such action is comtemplated, these procedures willbe followed. Furthermore, any grantee, contractor, subgrantee, or subcontractor is hereby put on notice that any award, or portion thereof is, conditional upon subsequent Congressional or executive action which may result from Federal budget defferal or recission actions.

24. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITIONS POLICIES ACT OF 1970, Pub. L. 91-646, 42 USC 4601, et seq. In conformance with this requirement and with the provisions of 28 CFR Part 52, the CJC shall assure that any program under which OJJDP financial assistance will be used to pay all or part of the cost of any program or project which will result in displacement of any person shall provide that:

    a. Fair and reasonable relocation payments and assistance shall be provided to or for displaced persons as are required in such regulations as are issued by the Attorney General.

    b. Relocation and assistance programs shall be provided such persons in accordance with such regulations issued by the Attorney General.

    c. Within a reasonable period of time prior to displacement, decent, safe and sanitary replacement must be available to the displaced person in accordance with such regulations as issued by the Attorney Genral.

d. Those persons affected by these provisions will be adequately informed of the available benefits, policies, and procedures relating to the payment of these benefits.

25. CRIMINAL PENALTIES.

a. Whoever embezzles, willfully misapplies, steals, or obtains by fraud or endeavors to embezzle, willfully misapply, steal or obtain by fraud any funds, assets, or property which are the subject of a grant or contract or other form of assistance pursuant to this title, whether received directly or indirectly from the Administration; or whoever receives, conceals, or retains such funds, assets, or property to his use or gain, knowing such funds, assets, or property to have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

b. Whoever knowingly and willfully falsifies, conceals, or covers up by trick, scheme, or device, any material fact in any application for assistance submitted pursuant to the Act or in any records required to be maintained pursuant to the Act shall be subject to prosecution under the provisions of Section 1001 of Title 18, United States Code.

c. Any law enforcement and criminal justice progam or project underwritten, in whole or in part, by any grant, or contract or other form of assistance pursuant to the Act, whether received directly or indirectly from the Administration, shall be subject to the provisions of Section 371 of Title 18, United States Code.

26. ELECTRONIC SURVEILLANCE. Under 18 USC 2512, transactions involving devices "primarily useful for the purpose of the surreptitious interception of wire or oral communication, "advertisement thereof, and advertising which promotes the use of any devices for such purposes are prohibited unless, in the case of a state officer, his conduct with regard to such a device falls within "the normal course of activities of....(the) state......"18 USC 2512 (2)(b). Normally, officers of a state which has no enabling statute under 18 USC 2516(2) would have no occasion to use, possess, or otherwise deal with devices within the scope of 18 USC 2512(1). Without such legislation only consensual use is permitted. No grants relating to such devices and their use will be authorized in states which do not have enabling legislation unless special justification, as explained below, is furnished. Accordingly, all applications that list the acquisition of equipment, with either federal or matching funds, that may be utilized for electronic surveillance purposes,that may be utilized for electronic surveillance purposes, in a state that does not have any enabling legislation, must include as part of the budget narrative for such equipment the following information:

1. A complete description of each item or equipment to be obtained.

2. A statement of how each item of equipment will be used.

3. The legal citations and justifications for the purchase and intended use of each item of equipment.

4. A description of the controls to be established over access to, the use of and ultimate disposal of such equipment.

Each application must contain the following statement signed by the Project Director: "(Applicant) agrees not to purchase or use in the course of this project any electronic, mechanical, or other device for surveillance purposes in violation of 18 USC 2511 and any applicable state statute related to wiretapping and surveilance."

The CJC will review all grant application to assure compliance.

27. COPYRIGHTS AND RIGHTS IN DATA. Where activites supported by this grant produce original computer programs, writing, sound recordings, pictorial reporductions, drawing or other graphical representation and works of any similar nature (the term computer programs includes executable computer programs and supporting data in any form), the government has the right to use, duplicate and disclose, in whole in part in any manner for any purpose whatsoever and have others do so. If the material is copy rightable, the grantee may copyright such, but the government reserves a royalty-free non-exclusive and irreverible license to reproduce, publish, and use such materials in whole or in part and to authorize others to do so. The grantee shall include provisions appropriate to effectuate the purpose of this condition in all contracts or employment, consultant's agreements, contract, or subgrants.

28. PATENTS. If any discovery or invention arises or is developed in course of or as a result of work performed under this grant, the grantee shall refer to the discovery or invention to OJJDP. The grantee hereby agrees that determination of rights to inventions made under this grant shall be made by the Administrator of OJJDP or his duly authorized representatve, who shall have the sole and exclusive powers to determine whether or not and where a patent application should be filed and to determine the disposition of all rights in such inventions, including title to and license rights under any patent application or patent which may issue thereon. The determination of the Administrator, or his duty authorized representative, shall be accepted as final. In addition, the grantee hereby agrees and otherwise recognizes that the Government shall acquire at least an irrevocable non-exclusive royalty free license to practice and have practiced throughout the world for governmental purposes any invention made in the course of or under this grant. The grantee shall include provisions appropriate of effectuate the purposes of this condition in all contract of employment, consultant's agreements, contracts or subgrants.

29. INTERGOVERNMENTAL COOPERATION ACT OF 1968. Pub. L. 90-577, 42 54201, et. seq. All State and local grantees of federal funds must abide by the regulations, policies, guidelines, and requirements of OMB Circular No. A-95 until April 30, 1983 when Executive Order 12372, Intergovernmental Review of Federal Programs, takes effect.

30. LOBBYING. The State must assure that pursuant to Section 227(c) of the JJDP Act, funds paid pursuant to Section 223(a)(10)(D) and Section 224(a)(7) to any public or private agency, organization, or institution or to any individual (whether directly or through a State criminal justice council) shall not be used to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, or other device, intended or designed to influence a Member of the Congress or any other Federal, State, or local elected official to favor or oppose any Act, bills, resolutions, or similar legislation, or any referendum, initiative, constitutional amendment, or any similar procedure by the Congress, any State legislature, any local council, or any similar governing body, except that this subsection shall not preclude such funds from being used in connection with communications to Federal, State, or local elected officials, upon the request of such official through proper official channels, pertaining to authorization, appropriation, or oversight measures directly affecting the operation of the program involved. Additional guidance on lobbying prohibitions may be found in the OJARS Guideline Manual, Financial and Administrative Guide for Grants, M 7100. 1B.

31. The State assures and certifies that the State and its subgrantees and contractors will adhere to the following executive orders Nos. 11246, 11377, 11507, 11738, 11752, and 11914; OMB Nos. A-21, A-87, A-102, A-110, and A-122; FMC Circulars Nos. 74-4 and 74-7 found at 34 CFR Parts 255 and 256 respectfully, and all amendments to those circulars, orders and statues.

32. In administering funds awarded pursuant to this application, the State must assure compliance with 28 CFR Parts 18, 19, 20, 22, 42, and 52 as they relate to activities funded with JJDP funds; G 6060. 1A, Medical Research and Psychosurgery; and the Guideline Manual M 7100. 1B, Financial and Administrative Guide for Grants. The State must further represent that it has established policies and provided procedures to assure sound fiscal control, effective management, and efficient use of funds received pursuant to this grant.

33. APPLICABILITY. The applicant State must further assure and certify that by appropriate language incorporated in each grant, subgrant, contract, subcontract, or other document under which funds are to be disbursed, the grantee shall assure that the above conditions apply to all recipients of assistance.

Application for Formula Grant (P.L. 93-415)

STATE:__________

ATTACHMENT A

List of ALL Programs for which Grant Support is Requested

State Desig.	SHORT PROGRAM TITLE	Total Funds	OJJDP	
			Federal Share	Match
	Planning and Administration			
	State Advisory Group Allocation			
	TOTALS*			

*Complete totals on last Continuation Page only.

DOJ-1981-09

federal register

Monday
August 16, 1982

Part VI

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Formula Grants for Juvenile Justice; Final Rule

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Formula Grants for Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of final rule and effective date.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is giving notice that its final rule published at 47 FR 21228, May 17, 1982, and the stayed portion of § 31.303(i)(3)(iv)(B) published in the **Federal Register** of June 30, 1982, 47 FR 28546, has been modified and will be effective August 16, 1982. OJJDP had requested further public comments on the stayed clause of the regulation which resulted in its modification. The regulation implements the Valid Court Order amendment to section 223(a)(12)(A) of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, establishing a basic framework within which non-criminal juvenile offenders who violate valid court orders may be placed in secure facilities.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT: Frank M. Porpotage, II, Formula Grants and Technical Assistance Division, OJJDP, 633 Indiana Avenue NW., Washington, DC 20531, Telephone: (202) 724–5911.

SUPPLEMENTARY INFORMATION: On June 30, 1982, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) published in the **Federal Register** a "Confirmation of Effective Date in Part and Stay of Effective Date in Part." OJJDP requested comments on one portion of its regulation to implement the Valid Court Order amendment to section 223(a)(12)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

The regulation is § 31.303(i)(3) of 28 CFR, Part 31 (Appendix A), which implements the formula grant program established by the Act. The portion for which additional comments were sought is § 31.303(i)(3)(iv)(B), which establishes the conditions under which a juvenile *accused* of violating a valid court order may be held in secure detention after a judicial determination has been made, based on a hearing, that there is probable cause to believe the youth violated the court order. Prior to this modification, the first clause of § 31.303(i)(3)(iv)(B) provided the following two circumstances under which detention pending a violation hearing would be sanctioned.

> (B) the juvenile has a demonstrable recent record of willful failure to appear at family court proceedings *or* a demonstrable recent record of violent conduct resulting in physical injury to self or others.

The OJJDP received 75 written comments from private citizens, private not-for-profit organizations, State and local public agencies and national organizations and associations. All comments have been considered by the OJJDP in adopting the final rule for the Valid Court Order provision.

Discussion of Comments

The central issue related to the subject clause was whether the limitation on judicial authority to place a status offender charged with a violation of a valid court order in secure detention was consistent with the amended Statute, section 223(a)(12)(A) of the Act, and its legislative history.

The majority of commentators recommended retention of the two conditions stressing that abandoning them would weaken the deinstitutionalization thrust of the Act. In addition, it was argued that the legislative history of the amendment indicated that Congress wanted the exception applied sparingly for those chronic status offenders who "continually flout the will of the court."

Comments from judicial associations recommended that the conditions to permit detention of an alleged violator beyond the 24-hour grace period should be reflective of the plain language of the amendment or be increased to cover other circumstances reflected by State law. First, courts must be provided with the ability to authorize detention of the juvenile if: (1) There is reason to believe that the juvenile may abscond and not appear at hearings, and (2) for protective purposes such as when the juvenile seeks the protective intervention of the court or may be a danger to himself or others or when no parent, guardian, or custodian can be found for the juvenile. In the first case, it is pointed out that chronic and habitual runaways may appear at court hearings, but not abide by court ordered non-secure placement or other orders of the court. By retaining this authority the court will be able to enforce their orders and provide needed services to the chronic status offender who has failed to accept non-secure treatment. Protective intervention of the court would be used in limited instances to provide protection to a juvenile who may need some form of protection from outside community factions. In the second instance, "protective" purposes were anticipated by the drafters of the amendment to enable courts to fulfill their basic statutory purpose.

OJJDP has determined that the proposed limits to detention circumstances lacked a substantive legal basis. It was concluded that the commentary of the judicial organizations is in keeping with the plain reading of the statute which provides an exception for all juveniles "charged with" violation of a valid court order and would address needed judicial discretion for enforcing valid court orders. It is believed that the reference to "protective purposes" and assurance of "appearance" in Subsection (iv) is consistent with the purposes of the statute and consistent with administration policy to implement legislation in as simple manner as possible with a concern to its effects on existing State law. Subsection (iv) basically covers situations where a judge has reason to believe, based on a record of failure to appear at a family court proceeding, that the juvenile will not appear at a hearing; or, has reason to believe, based on a record of conduct resulting in physical injury to self or others, that the juvenile may be a danger to self or others; or, that the juvenile is a habitual or chronic runaway who will not appear at the violation hearing or remain in non-secure placement; or, where the juvenile requests the protective custody of the court; or, where no parent, guardian, or custodian can be found who is willing to provide proper supervision.

While few commentators specifically suggested that any of these circumstances are inappropriate, an underlying theme was expressed which emphasized limited use of the authority granted in the amendment. We are aware of no other circumstances, permitted by State law, which are relevant to the amendment or under which this authority would be properly exercised. However, laws and procedures change and individual cases do not always fit into neat regulatory classifications. Consequently, the general "protective purpose" which is the purpose intended by the amendment is set out in Subsection (iv).

Section 31.303(i)(3)(vi) of the final portion of regulation addressed procedural requirements when judges enter any order that directs or authorizes placement in a secure facility. A clarification was requested to reflect that a separate action or statement that a "determination" had been made on the record was not intended.

All juvenile courts are "courts of record." The clause "on the record" has been eliminated since the determination will automatically be recorded in a court of record and the record will reflect the provision of due-process rights and elements of the order. Secondly, the clause "in the case of a violation hearing" is added to the last clause of the Section. This will require judicial determination of the least restrictive alternative at the time of violation hearings only which is the intent of section 223(a)(12)(B) of the Act from which this clause was drawn.

This announcement does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Finally, because this regulation will not have significant economic impact on a substantial number of small entities, no analyses of the impact of these rules on such entities is required by the Regulatory Flexibility Act, U.S.C. 601, et seq., 28 CFR Part 31 is accordingly amended by adding a new § 31.303(i)(3) as shown in Appendix A.

Charles A. Lauer,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

List of Subjects in 28 CFR Part 31

Grant programs, Law, Juvenile delinquency.

PART 31—FORMULA GRANTS

Section 31.303(i)(3) (iv) and (vi) are revised to read as set forth below. For the convenience of the user, we are reprinting the final rule as published at 47 FR 21228, May 17, 1982 and republished at 47 FR 28546, June 30, 1982, with the modifications discussed herein included.

§ 31.303 Substantive requirements.

* * * * *

(i) * * *

(3) *Valid Court Order.* For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions must be present prior to secure incarceration:

(i) The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile.

(ii) The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.

(iii) The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile and to his attorney and/or to his legal guardian in writing and be reflected in the court record and proceedings.

(iv) All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, for protective purposes as prescribed by State law, or to assure the juvenile's appearance at the violation hearing, as provided by State law, if there has been a judicial determination based on a hearing during the 24-hour grace period that there is probable cause to believe the juvenile violated the court order. In such case the juvenile may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed 72 hours exclusive of nonjudicial days. A juvenile found in a violation hearing to have violated a court order may be held in a secure detention or correctional facility.

(v) Prior to and during the violation hearing the following full due process rights must be provided:

(A) The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;

(B) The right to a hearing before a court;

(C) The right to an explanation of the nature and consequences of the proceeding;

(D) The right to legal counsel, and the right to have such counsel appointed by the court if indigent;

(E) The right to confront witnesses;

(F) The right to present witnesses;

(G) The right to have a transcript or record of the proceedings; and

(H) The right of appeal to an appropriate court.

(vi) In entering any order that directs or authorizes disposition of placement in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (i)(3), (i), (ii), (iii) of this section) and the applicable due process rights (paragraph (i)(3), (v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must determine that there is no less restrictive alternative appropriate to the needs of the juvenile and the community.

(vii) A non-offender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.

John J. Wilson,

Acting General Counsel.

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DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Implementation of Formula Grants Program for Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of final regulations.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing final regulations for the implementation of the formula grant program authorized by Part B, Subpart I, of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended. Formula grants are authorized to States which in turn make subgrants for use by State and local public and private agencies in carrying out juvenile justice and delinquency improvement programs.

DATE: These regulations are effective December 31, 1981.

FOR FURTHER INFORMATION CONTACT: Frank M. Porpotage, II, Formula Grants and Technical Assistance Division, 633 Indiana Avenue, NW., Room 742, Washington, D.C. 20531. Telephone: (202) 724-5911.

SUPPLEMENTARY INFORMATION: Draft regulations were originally published in the **Federal Register** on June 1, 1981 for public comment. Substantive changes were recommended and the draft regulations were again published for public comment on September 3, 1981. Written comments from some 60 national, regional, and local organizations were received. All comments have been considered by the OJJDP in this publication. These regulations, with the exception of § 31.303(i)(3), Valid Court Order, are final.

Discussion of Comments

Several respondents commented favorably upon the streamlining of the formula grant application requirements, an effort to simplify program administration.

The following is a summary of substantive comments and the response of the OJJDP:

1. *Comment:* The serious and violent juvenile offender emphasis of § 31.303(e) indicates that States should allocate a minimum of 30% of their formula grant funds to programs designed for these populations. Is this allocation mandatory?

Response: No. This provision in the regulations was designed to *encourage* States to address the problem of serious and violent crimes committed by juveniles. This is a major concern to the Congress, as reflected in the 1980 Amendments to the JJDP Act, and to the American public. The wording of this section attempts to focus State attention on a careful consideration of the need to allocate additional resources to this area of programming.

2. *Comment:* The serious and violent juvenile offender emphasis of § 31.303(e) should be redrafted to clarify that serious crime includes property crime. States have varying problems with juvenile violence and property crime and should be free to determine which to emphasize in programming.

Response: Agreed. A modification has been made in § 31.303(e) which serves to clarify this point.

3. *Comment:* The emphasis on serious and violent crime is inconsistent with the 66⅔% pass through to local government requirement of Section 223(a)(5) of the Act because programs for this segment of the juvenile offender population are generally organized at the State level.

Response: OJJDP will consider a waiver request from States where rehabilitation or other services for juveniles who commit serious and violent crimes are organized at the State level and to the extent justified by an increased State emphasis on this priority problem.

4. *Comment:* Specific reference to additional program areas, i.e., Project New Pride or Restitution, should be added to the serious and violent juvenile crime emphasis of the regulations.

Response: In drafting this section, OJJDP simply used the language of the legislation. Additional language specifying program options would be superfluous because States are free to select those program options which they determine have the best likelihood of success.

5. *Comment:* The jail removal requirement, Section 223(a)(14) of the JJDP Act, specifies two separate and distinct "exceptional circumstances" which are not reflected in the draft regulations.

Response: The regulations reflect the intent of the law. As Congressman Ike Andrews, Chairman of the House Subcommittee on Human Resources, stated in a letter to OJJDP on February 17, 1981, "You are completely correct that the exception language is intended to establish a single exception applying only to low population density areas. Only in such areas would the temporary detention in adult facilities of juveniles accused of serious crimes against persons be permitted should no acceptable alternative be available."

6. *Comment:* Will States be permitted, for the purpose of monitoring the Section 223(a)(14) jail removal requirement, a "grace period" in which a juvenile temporarily detained in an adult jail or lockup need not be reported as a monotoring violation? This would be similar to the 24-hour "grace period" currently permitted with respect to the Section 223(a)(12)(A) deinstitutionalization mandate.

Response: It is Congress' finding that juvenile offenders and nonoffenders should not be placed in an adult jail or lockup for any period of time. However, for the purpose of monitoring and reporting compliance with the jail removal requirement, the House Committee on Education and Labor stated, in its Committee Report on the 1980 Amendments, that it would be permissible for OJJDP to permit States to exclude, for monitoring purposes, those juveniles alleged to have committed an act which would be a crime if committed by an adult (criminal-type offenders) and who are held in an adult jail or lockup for *up to six hours.* This six-hour period would be limited to the temporary holding in an adult jail or lockup by police for the purpose of identification, processing, and transfer to juvenile court officials or to juvenile shelter or detention facilities. Any such holding of a juvenile criminal-type offender should be limited to the absolute minimum time necessary to complete this action, not to exceed six hours, but in no case overnight. Even where such a temporary holding is permitted, the Section 223(a)(13) separation requirement would operate to prohibit the accused juvenile criminal-type offender from being in sight or sound contact with an adult offender during this brief holding period. Under no circumstances does the allowance of a six hour "grace period" applicable to juvenile criminal-type offenders permit a juvenile status offender or nonoffender be detained, even temporarily, in an adult jail or lockup under Section 223(a)(14). In monitoring for compliance with Section 223(a)(14), the regulations require States to report the number of juvenile criminal-type offenders held in adult jails and lockups *in excess of six hours* (see § 31.303(i)(5)(iv)(G) and (H)).

7. *Comment:* The 48-hour limit on holding juveniles in adult jails or lockups under the Section 223(a)(14) "removal exception" is not sufficient to cover periods when court is not in session, such as weekends.

Response: Because this exception permits temporary incarceration in jails and lockups of juveniles *accused of* a serious crime against persons, a maximum 48-hour period is considered by OJJDP to be the outside limit and is intended to take into account weekends and other circumstances that would preclude the immediate transfer to an appropriate juvenile facility.

8. *Comment:* The guideline governing the "removal exception" to Section 223(a)(14), as promulgated in the draft regulations, § 31.303(i)(4), allows each

State to set specific criteria for determining "areas characterized by low population density" and to determine that "no alternative placement is available." These criteria should be established by OJJDP so that the criteria and standards are uniform for all States and can be reviewed by the public through the review and comment process of the **Federal Register**.

Response: The narrow "removal exception" of the law was designed to reflect "the special needs of areas characterized by low population density." OJJDP, in its rulemaking role, reviewed a number of possible criteria that could be imposed on States in defining the exception. However, we concluded that it was not feasible to establish uniform criteria applicable to all States that would be both fair and rational. OJJDP believes that the individual States are in a better position to determine the unique circumstances that warrant, subject to OJJDP's review and approval, the specific criteria to be applied in the States to implement the "removal exception" to the Section 223(a)(14) jail removal provision.

9. *Comment:* The regulations should define the term "not served by a local or regional juvenile detention facility" as used in the Section 223(a)(14) "removal exception."

Response: Agreed. A general definition of the term has now been added to regulations at § 31.303(f)(4)(iv). The definition provides that a county is not served by a local or regional juvenile detention facility when "there is no public or private juvenile detention facility operated within the county or there is no public or private juvenile facility which is in operation to provide secure detention for accused juvenile offenders from that county."

10 *Comment:* The 1980 Amendments to the JJDP Act allow an alternative State agency, other than the State Criminal Justice Council, to be designated by the Governor as the responsible agency to supervise the administration of the State's formula grant program. Any such designation is subject to approval by the OJJDP Administrator. One commentator recommended that operating agencies be specifically excluded from consideration as an acceptable alternative State agency.

Response: OJJDP is aware of the potential problems with having an operating agency serving as the administering agency for the formula grant program. The Fiscal Year 1982 Application Kit addresses this issue, requiring that in any instance where the Governor requests approval for the designation of an operating agency as the alternative State agency, it must be clearly demonstrated that the agency's supervisory board will have full policymaking authority *and* will be independent of the administrative structure of the operating agency.

11. *Comment:* The definition of "secure" as used in the terms "secure detention facility" and "secure correctional facility" has been substantially changed by removing the use of "staff security measures" in addition to other architectural means for restricting the movements and activities of residents. This change is not warranted.

Response: The change noted in the draft regulations (§ 31.304(b)) reflects the revised definitions of "secure detention facility" and "secure correctional facility" in Section 103(12) and (13) of the Act, as amended.

12. *Comment:* One third of the required 66⅔% pass through of funds to local government, § 31.301(b), should be required to be allocated to private nonprofit agencies.

Response: Such a requirement is beyond the authority of OJJDP as there is no statutory basis to support such a rule.

13. *Comment:* Because recent research has shown that there exists differential handling of minority youth in the juvenile justice system, it is recommended that a percentage of funds be set aside to further research this phenomenon and to generate specific proposals that may reduce the flow of minorities into the system.

Response: While OJJDP is aware of these research findings, the formula grant program is not the appropriate place for OJJDP to address funding for this purpose. Within the past six months, the National Institute for Juvenile Justice and Delinquency Prevention, the research arm of OJJDP, has awarded three research grants which address different aspects of this issue. It is expected that this research will provide the kinds of basic information needed to reduce the differential penetration of minority youth into the system.

Valid Court Order

There was substantial comment on and criticism of the revised valid court order guideline (§ 31.303(f)(3)). Fifteen of the commentators voiced the opinion that the revised provision failed to correctly reflect the Congressional intent underlying the valid court order amendment to Section 223(a)(12)(A) of the Juvenile Justice Act. These commentators generally favored retention of the initial implementing guideline published for comment in the **Federal Register** on June 1, 1981 (46 FR 29436, § 31.702(h)(3), at 29443). Specifically, they called for reinstatement of the following features of that guideline:

(1) *No secure detention under any circumstance* of a juvenile status offender or nonoffender *alleged* to have violated a valid court order;

(2) Reinstate the requirement that the judge presiding over the violation hearing, in entering a dispositional order directing or authorizing placement in a secure facility, *certify on the record* (rather than determine) *that all the elements of a valid court order have been met;* and

(3) Reinstate the requirement that the judge in (2) above also certify on the record (rather than make no certification or determination) that *there is no rational alternative to incarceration of the juvenile.*

In addition, a variety of suggestions were offered by commentators seeking to increase or clarify the protections afforded to juvenile status offenders and nonoffenders who may be subject to incarceration as a result of a court order violation. These suggestions are as follows:

(1) For a court order to be deemed valid the juvenile status offender or nonoffender should have had the *right to counsel* at the initial adjudication or other court proceeding in which the court order regulating future conduct was entered;

(2) For a court order to be deemed valid, the juvenile status offender or nonoffender should have received the *full range of due process rights* listed in § 31.303(f)(3)(v)(A)-(H) at the initial adjudication or other court proceeding in which the court order regulating future conduct was entered;

(3) The warning to the juvenile of the consequences of violating the court order (§ 31.303(f)(3)(iii)) should be provided to the juvenile *and to his attorney and/or to his parents or guardian;*

(4) The warning referenced in (3) above should be in writing *and* (rather than "or") be reflected in the court record and proceedings;

(5) The term "court of competent jurisdiction" (§ 31.303(f)(3)(iv)) should be defined so that a juvenile would only be subject to valid court order violation proceedings before the *same judge* in the *same court* in which the order was entered;

(6) The "24-hour grace period" referenced in § 31.303(f)(3)(iv) should clearly specify that this means 24 hours *exclusive of nonjudicial days* (i.e.,

holidays and weekends) consistent with OJJDP monitoring policy;

(7) The guideline should require that any judicial *determination of probable cause*, used as a basis for detaining a juvenile pending a violation hearing, must be held *within the 24-hour grace period*;

(8) There should be *no provision for a probable cause hearing*. Rather, the guideline should require that the violation hearing be held within the 24-hour grace period or the juvenile released to an appropriate nonsecure placement pending the violation hearing;

(9) A juvenile held in a secure detention facility, after a probable cause hearing pending a violation hearing, should be held for the minimum time necessary to schedule and hold a violation hearing, but in no event longer than:

(a) *3 calendar days*; or

(b) *72 hours*; or

(c) *72 hours exclusive of nonjudicial days*; or

(d) *5 calendar days*; or

(e) *10 calendar days or the number of days that an alleged delinquent offender may be held under State law in secure detention prior to an adjudicatory hearing*, whichever is less;

(10) Where a judicial determination is made that there is probable cause to believe that a status offender or nonoffender violated a valid court order, placement in a secure detention facility pending a violation hearing should require, at a minimum, a judicial finding that:

(a) There is a *probability that the juvenile will not appear for further proceedings*; or

(b) The *juvenile poses a danger to self or to community safety*;

(11) The authority to hold a juvenile status offender or nonoffender in a "secure detention facility" or a "secure correctional facility" should specify that such facilities include only those which are *exclusively for juvenile offenders*;

(12) The full due process rights enumerated in § 31.303(f)(3)(v) should include a *standard of proof beyond a reasonable doubt*; and

(13) OJJDP should establish *maximum numbers of juvenile status offenders and nonoffenders who can be held for valid court order violations* and establish a *maximum length of secure incarceration* for juveniles who violate valid court orders.

A lesser number of respondents believed that the guideline, rather than failing to provide adequate due process protection to juveniles, failed to provide sufficient judicial flexibility, offering the following suggestions to increase judicial discretion:

(1) The determination of probable cause to believe a juvenile status offender or nonoffender violated a valid court order should be made by a judge *or any duly authorized officer of the court acting on behalf of the judge*; and

(2) OJJDP should *defer to State law* in determining the maximum length of time a status offender or nonoffender alleged to have violated a valid court order may be held in secure detention pending a violation hearing.

As can be seen, there is a wide divergence of views on valid court order amendment implementation. This stems in part from a legislative history that is inconclusive on certain points, differences in various State laws, policies and practices, and the complex legal issues that underlie the treatment of juvenile status offenders and nonoffenders who violate valid court orders. It is OJJDP's conclusion that publication of a final regulation governing implementation of the valid court order amendment at this time, given the expressed concerns and information available, would not further the proper implementation of the amendment.

Consequently, OJJDP believes that further exploration and consideration of the issues raised above (and other relevant valid court order considerations) are desirable before a final rule is promulgated. Therefore, OJJDP plans to schedule at least two hearings to receive oral testimony and to give interested parties the opportunity to submit further written input on valid court order implementation. A notice will be placed in the **Federal Register** regarding the date and time for such hearings and providing for the receipt of written submissions. OJJDP anticipates that this notice will be published within 30 days. The notice will explain the rationale of the various positions and options presented in response to the **Federal Register** drafts. OJJDP's primary objective is to fully implement the congressional intent, considering the input and experience of practitioners, and to provide for a workable regulation that does not create unrealistic policies, and does not, by implication, undermine State procedural law.

OJJDP will reserve § 31.303(i)(3) of the final regulations. Pending the publication of a final regulation, States should continue to follow applicable State law and Constitutional principles of due process in their implementation and monitoring of the valid court order amendment. OJJDP urges States not to consider modification of existing State law or policy regarding the secure incarceration of juvenile status and nonoffenders who violate the lawful orders of the court until a final regulation is published.

This annoucement does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more; (b) a major increase in any costs of prices; or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Finally, because this regulation will not have significant economic impact on a substantial number of small entities, no analyses of the impact of these rules on such entities is required by the Regulatory Flexibility Act, U.S.C. 601, et seq., 28 CFR part 31 is accordingly revised to read as follows:

PART 31—FORMULA GRANTS

Subpart A—General Provisions

Sec.
31.1 General.
31.2 Statutory authority.
31.3 Submission date.

Subpart B—Eligible Applicants

31.100 Eligibility.
31.101 Establishment of State Criminal Justice Council.
31.102 Membership.

Subpart C—General

31.200 General.
31.201 Audit.
31.202 Civil rights.
31.203 Open meetings and public access to records.

Subpart D—Juvenile Justice Act Requirements

31.300 General.
31.301 Funding.
31.302 Applicant State Agency.
31.303 Substantive requirements.
31.304 Definitions.

Subpart E—General Conditions and Assurances

31.400 Compliance with statute.
31.401 Compliance with other Federal laws, orders, circulars.
31.402 Application on file.
31.403 Non-discrimination.

Authority: Juvenile Justice and Delinquency Prevention Act of 1974, as amended, (42 U.S.C. 5601 et seq.)

Subpart A—General Provisions

§ 31.1 General.

This Part defines eligibility and sets forth requirements for application for and administration of formula grants to State governments authorized by Part B, Subpart I, of the Juvenile Justice and Delinquency Prevention Act.

§ 31.2 Statutory authority.

The statute establishing the Office of Juvenile Justice and Delinquency Prevention and giving authority to make grants for juvenile justice and delinquency prevention improvement programs is the *Juvenile Justice and Delinquency Prevention Act of 1974*, as amended (42 U.S.C. 5601 et seq.).

§ 31.3 Submission date.

Juvenile Justice Plans for Fiscal Year 1982 shall be submitted to the OJJDP within 60 days after States are notified of fiscal year 1982 Formula Grant allocations.

Subpart B—Eligible Applicants

§ 31.100 Eligibility.

All States as defined by Section 103(7) of the JJDP Act.

§ 31.101 Establishment of State Criminal Justice Council.

Each state which chooses to apply for a formula grant shall establish or designate by law a State Criminal Justice Council unless an alternative State agency is designated by the Chief Executive and approved by the OJJDP Administrator pursuant to Section 261(c) of the JJDP Act. States must assure they have available for review a copy of the State law establishing the Council, and a current list of Council membership.

§ 31.102 Membership of Council.

Pursuant to Section 1301(i) of the Justice System Improvement Act (JSIA) of 1979, States participating in the formula grant program of the Juvenile Justice and Delinquency Prevention Act, in addition to statutory membership requirements, must include on the State Criminal Justice Council the chairperson and at least two additional citizen members of that Act. For purposes of this requirement a citizen member is defined as any person who is not a full-time government employee or elected official. Any executive committee of the Council must include the same proportion of juvenile justice advisory group members as are included in the total Council membership.

Subpart C—General Requirements

§ 31.200 General.

This subpart sets forth general requirements applicable to formula grant recipients under the JJDP Act of 1974, as amended. Applicants must assure compliance or submit necessary information on these requirements.

§ 31.201 Audit.

The State must assure that it adheres to the audit requirements enumerated in the "Financial and Administrative Guide for Grants" OJARS Guideline Manual 7100.1B, October 20, 1980. Chapter 8 of the Manual contains a comprehensive statement of audit policies and requirements relative to grantees and subgrantees.

§ 31.202 Civil rights.

(a) To carry out the State's Federal civil rights responsibilities the plan must:

(1) Designate a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements, assurances, and conditions are met and who shall act as liaison in all civil rights matters with OJJDP and the OJARS' Office of Civil Rights Compliance (OCRC).

(2) Contain the Council's Equal Employment Opportunity Program (EEOP), if required to maintain one under 28 CFR 42.301, et seq., where the application is for $500,000 or more.

(b) The application must provide assurance that the State will:

(1) Require that every applicant required to formulate an EEOP in accordance with 28 CFR 42.301 et seq., submit a certification to the State that it has a current EEOP on file, which meets the requirement therein.

(2) Require that every criminal or juvenile justice agency applying for a grant of $500,000 or more submit a copy of its EEOP (if required to maintain one under 28 CFR 42.301, et seq.) to OCRC at the time it submits its application to the State;

(3) Inform the public and subgrantees of affected persons' rights to file a complaint of discrimination with OCRC for investigation;

(4) Cooperate with OCRC during compliance reviews of recipients located within the State; and

(5) Comply, and that its subgrantees and contractors will comply with the requirement that, in the event that a Federal or State court or administration agency makes a finding of discrimination on the basis of race, color, religion, national origin, or sex (after a due process hearing) against a State or a subgrantee or contractor, the affected recipient or contractor will forward a copy of the finding to OCRC.

§ 31.203 Open meetings and public access to records.

The State must assure that it will comply with the requirements of Section 402(c)(2) of the Justice System Improvement Act.

Subpart D—Juvenile Justice Act Requirements

§ 31.300 General.

This subpart set forth specific JJDP Act requirements for application and receipt of formula grants.

§ 31.301 Funding.

(a) *Allocation to States.* Each State receives a base allotment of $225,000 except for the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth of the Northern Mariana Islands where the base amount is $56,250. Funds are allocated among the States on the basis of relative population under 18 years of age.

(b) *Funds for Local Use.* At least two-thirds of the formula grant allocation to the State must be used for programs by local government, or local private agencies unless the State applies for and is granted a waiver by the Office of Juvenile Justice and Delinquency Prevention.

(c) *Match.* Formula grants under the JJDP Act shall be 100% of approved costs, with the exception of planning and administration funds, which require a 100% cash match (dollar for dollar), and construction projects funded under Section 227(a)(2) which require a 50% cash match.

(d) *Funds for Administration.* Not more than 7.5% of the total annual formula grant award may be utilized to develop the annual juvenile justice plan and pay for administrative expenses, including project monitoring evaluation. These funds are to be matched on a dollar for dollar basis. The State shall make available needed funds for planning and administration to units of local government or combinations on an equitable basis. Each annual application must identify uses of such funds.

§ 31.302 Applicant State Agency.

(a) Pursuant to Section 223(a)(2) and Section 261(c) of the JJDP Act, the State assures that a State Criminal Justice Council or other State agency approved under Section 261(c) has been designated as the sole agency for supervising the preparation and administration of the plan and has the authority to implement the plan.

(b) The Chief Executive shall establish a Juvenile Advisory Group pursuant to Section 223(a)(3) of the JJDP Act. The State shall provide a list of all current advisory group members, indicating their respective dates of appointment and how each member meets the membership requirements specified in this Section of the Act.

(c) The State shall assure that it complies with the Advisory Group Financial support requirement of Section 222(d) and the composition and function requirements of Section 223(a)(3) of the JJDP Act.

§ 31.303 Substantive requirements.

(a) *Consultation with and Participation of Units of General Local Government.* The State shall assure that it has complied with Sections 223(a) (4) and (6) of the Act.

(b) *Participation of Private Agencies.* The State shall assure that it has complied with Section 223(a)(9) of the Act.

(c) *Pass-Through Requirement.* The State shall assure that it complies with Section 223(a)(5) of the Act. For purposes of the pass-through requirement, a *local private agency* is defined as a private non-profit agency or organization that provides program services within an identifiable unit or a combination of units of general local government.

(d) *Rights of Privacy of Recipients of Services.* Pursuant to Sections 223(a)(17) and 229 of the JJDP Act, the State shall assure that it has established procedures to meet this requirement.

(e) *Serious Juvenile Offender Emphasis.* Pursuant to Sections 101(a)(8), 223(a)(10) and 224(a)(12) of the JJDP Act, the Office encourages States that have identified serious and violent juvenile offenders as a priority problem, to allocate a minimum of 30% of the formula grant award to programs designed for serious and violent juvenile offenders. Particular attention should be given to the areas of sentencing, providing resources necessary for informed dispositions, and rehabilitation. In accord with Administration policy direction, the Office will attempt to assist States to reach this goal.

(f) *Deinstitutionalization of Status Offenders and Non-Offenders.* Pursuant to Section 223(a)(12)(A) of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable covering the three-year planning cycle, for assuring that the requirements of this section are met. Refer to § 31.303(i)(3) for the rules related to the valid court order exception to this Act requirement.

(2) Describe the barriers the State faces in achieving full compliance with the provisions of this requirement.

(3) For those States that have achieved "substantial compliance" as outlined in Section 223(c) of the Act, indicate the unequivocal commitment to achieving full compliance. Attach documentation.

(4) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with Section 223(a)(12)(A) may, in lieu of addressing paragraphs (f)(1), (2), and (3) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(5) Submit the report required under Section 223(a)(12)(B) of the Act as part of the annual monitoring report required by Section 223(a)(15) of the Act.

(g) *Contact with Incarcerated Adults.* (1) Pursuant to Section 223(a)(13) of the JJDP Act the State shall:

(i) Describe its plan and procedure, covering the three-year planning cycle, for assuring that the requirements of this section are met. The term *regular contact* is defined as sight and sound contact with incarcerated adults, including inmate trustees. This prohibition seeks as complete a separation as possible and permits no more than haphazard or accidental contact between juveniles and incarcerated adults. In addition, include a timetable for compliance and justify any deviation from a previously approved timetable.

(ii) In those isolated instances where juvenile criminal-type offenders remain confined in adult facilities or facilities in which adults are confined, the State must set forth the procedures for assuring no regular sight and sound contact between such juveniles and adults.

(iii) Describe the barriers which may hinder the separation of alleged or adjudicated criminal-type offenders, status offenders and non-offenders from incarcerated adults in any particular jail, lockup, detention or correctional facility.

(iv) Those States which, based upon the most recently submitted monitoring report, have been found to be in compliance with Section 223(a)(13) may, in lieu of addressing paragraphs (g)(1)(i), (ii), and (iii) of this section, provide an assurance that adequate plans and resources are available to maintain compliance.

(v) Assure that adjudicated offenders are not reclassified administratively and transferred to an adult (criminal) correctional authority to avoid the intent of segregating adults and juveniles in correctional facilities. This does not prohibit or restrict waiver of juveniles to criminal court for prosecution, according to State law. It does, however, preclude a State from administratively transferring a juvenile offender to an adult correctional authority or a transfer within a mixed juvenile and adult facility for placement with adult criminals either before or after a juvenile reaches the statutory age of majority. It also precludes a State from transferring adult offenders to a juvenile correctional authority for placement.

(2) *Implementation.* The requirement of this provision is to be planned and implemented immediately by each state in light of identified constraints on immediate implementation. Immediate compliance is required where no constraints exist. Where constraints exist, the designated date of compliance in the latest approved plan is the compliance deadline. Those states not in compliance must show annual progress toward achieving compliance until compliance is reached.

(h) *Removal of Juveniles from Adult Jails and Lock-ups.* Pursuant to Section 223(a)(14) of the JJDP Act, the State shall:

(1) Describe its plan, procedure, and timetable for assuring that requirements of this section will be met by December 8, 1985. Refer to § 31.303(i)(4) to determine the "exceptional circumstances" which have to exist to permit, in areas characterized by low population density with respect to the detention of juveniles and where no existing acceptable alternative placement is available, the temporary detention of juveniles accused of serious crimes against persons.

(2) Describe the barriers which the State faces in removing all juveniles from adult jails and lock-ups. This requirement excepts only those juveniles formally waived or transferred to criminal court and criminal charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been involved through the filing of criminal charges.

(3) For those States that have achieved "substantial compliance" with Section 223(a)(14) as specified in Section 223(c) of the Act, indicate the unequivocal commitment to achieving full compliance. Attach documentation.

(4) Those States which, based upon the most recently submitted monitoring report, have been found to be in full compliance with Section 223(a)(14) may, in lieu of addressing paragraphs (h)(1), (2), and (3) of this section, provide an assurance that adequate plans and resources are available to maintain full compliance.

(i) *Monitoring of Jails, Detention Facilities and Correctional Facilities.* (1) Pursuant to Section 223(a)(15) of the JJDP Act, and except as provided by paragraph (i)(7) of this section, the State shall:

(i) Indicate how it will annually identify and survey all secure detention or correctional facilities, jails, lock-ups, and other facilities usable for the detention and confinement of juveniles.

(ii) Provide a plan for an annual on-site inspection of all such facilities identified in paragraph (i)(1)(i) of this section. Such plan shall include a procedure for reporting and investigating compliance complaints in accordance with Section 223(a)(12)(A), (13), and (14).

(iii) Include a description of the barriers which the State faces in developing a monitoring system to establish and report the level of compliance with Sections 223(a)(12), (13), and (14).

(2) For the purpose of monitoring for compliance with Section 223(a)(12)(A) of the Act a secure detention or correctional facility is:

(i) Any secure public or private facility used for the lawful custody of *accused* or adjudicated juvenile offenders or non-offenders; or

(ii) Any secure public or private facility, which is also used for the lawful custody of accused or convicted adult criminal offenders.

(3) *Valid Court Order* [Reserved].

(4) *Removal Exception (Section 223(a)(14)).* The following conditions must be met in order for an accused juvenile criminal-type offender to be temporarily detained (for up to 48 hours) in an adult jail or lock-up:

(i) The geographic area which has jurisdiction over the juvenile has been certified as having a low population density, based upon specific criteria developed by the State and approved by OJJDP. The criteria developed must take into account total county population per square mile. The State must provide rationale for the criteria proposed.

(ii) The juvenile must be accused of a serious crime against persons to include: Criminal homicide, forcible rape, mayhem, kidnapping, aggravated assault, robbery, and extortion accompanied by threats of violence.

(iii) A determination must be made that there is no existing acceptable alternative placement available for the juvenile pursuant to criteria developed by the State and approved by OJJDP.

(iv) The county is not served by a local or regional juvenile detention facility. Generally, this phrase means that there is no public or private juvenile detention facility operated within the county or there is no public or private juvenile facility which is in operation to provide secure detention for accused juvenile offenders from that county.

(5) *Reporting Requirement.* The State shall report annually to the Administrator of OJJDP on the results of monitoring for Sections 223(a)(12), (13), and (14) of the JJDP Act. Three copies of the report shall be submitted to the Administrator of OJJDP no later than December 31 of each year.

(i) To demonstrate the extent of compliance with Section 223(a)(12)(A) of the JJDP Act, the report must at least include the following information for both the baseline and the current reporting periods.

(A) Dates of baseline and current reporting period.

(B) Total number of public and private juvenile detention and correctional facilities AND the number inspected on-site.

(C) Total number of accused status offenders and non-offenders held in any secure detention or correctional facility as defined in § 31.303(i)(2) for longer than 24 hours exclusive of non-judicial days, excluding those held pursuant to a judicial determination that the juvenile violated a valid court order.

(D) Total number of adjudicated status offenders and non-offenders held in any secure detention or correctional facility as defined in § 31.303(i)(2), excluding those held pursuant to a judicial determination that the juvenile violated a valid court order.

(E) Total number of status offenders held in any secure detention or correctional facilities pursuant to a judicial determination that the juvenile violated a valid court order.

(ii) To demonstrate the extent to which the provisions of Section 223(a)(12)(B) of the JJDP Act are being met, the report must include the total number of accused and adjudicated status offenders and non-offenders placed in facilities that are:

(A) Not near their home community;

(B) Not the least restrictive appropriate alternative; and

(C) Not community-based.

(iii) To demonstrate the progress toward and extent of compliance with Section 223(a)(13) of the JJDP Act, the report must at least include the following information for both the baseline and the current reporting periods.

(A) Designated date for achieving full compliance.

(B) The total number of facilities that can be used for the secure detention and confinement of both juvenile offenders and adult criminal offenders.

(C) The total number of facilities used for the secure detention and confinement of both juvenile offenders and adult criminal offenders during the past 12 months AND the number inspected on-site.

(D) The total number of facilities used for secure detention and confinement of both juvenile offenders and adult criminal offenders which did not provide adequate separation.

(E) The total number of juvenile offenders and non-offenders NOT adequately separated in facilities used for the secure detention and confinement of both juveniles and adults.

(iv) To demonstrate the progress toward and extent of compliance with Section 223(a)(14) of the JJDP Act the report must at least include the following information for the baseline and current reporting periods:

(A) Dates of baseline and current reporting period.

(B) Total number of adult jails in the State AND the number inspected on-site.

(C) Total number of adult lock-ups in the State AND the number inspected on-site.

(D) Total number of adult jails holding juveniles during the past twelve months.

(E) Total number of adult lock-ups holding juveniles during the past twelve months.

(F) Total number of adult jails and lock-ups in areas meeting the "removal exceptions" as noted in subparagraph 4 above, including a list of such counties.

(G) Total number of juvenile-criminal-type offenders held in adult jails in excess of six hours.

(H) Total number of juvenile-criminal-type offenders held in adult lock-ups in excess of six hours.

(I) Total number of accused and adjudicated status offenders and non-offenders held in any adult jail or lock-up as defined in Section 31.304.

(J) Total number of juveniles accused of a serious crime against persons held less than 48 hours in adult jails and lock-ups in areas meeting the "removal exception" as noted in subparagraph 4 above.

(6) *Compliance.* The State must demonstrate the extent to which the requirements of Section 223(a)(12)(A), (13), and (14) of the Act are met. Should the State fail to demonstrate compliance with the requirements of these Sections within designated time frames, eligibility for formula grant funding shall terminate. The compliance levels are:

(i) *Substantial compliance* with Section 223(a)(12)(A) requires within three years of initial plan submission achievement of a 75% reduction in the aggregate number of status offenders and non-offenders held in secure detention or correctional facilities or removal of 100% of such offenders from secure correctional facilities only. In addition, the State must make an unequivocal commitment, through appropriate executive and legislative action, to achieving full compliance within two additional years. *Full compliance* is achieved when a State has removed 100% of such juveniles from secure detention and correctional facilities or can demonstrate full compliance with *de minimis* exceptions pursuant to the policy criteria contained in the **Federal Register** of January 9, 1981 (46 FR 2566–2569).

(ii) *Compliance* with Section 223(a)(13) has been achieved when a State can demonstrate that:

(A) The last submitted monitoring report, covering a full 12 months of data, demonstrates that no juveniles were incarcerated in circumstances that were in violation of Section 223(a)(13); or

(B)(*1*) State law, regulation, court rule, or other established executive or judicial policy clearly prohibits the incarceration of all juvenile offenders in circumstances that would be in violation of Section 223(a)(13);

(*2*) All instances of noncompliance reported in the last submitted monitoring report were in violation of, or departures from, the State law, rule, or policy referred to in paragraph (i)(6)(ii)(B)(*1*) of this section;

(*3*) The instances of noncompliance do not indicate a pattern or practice but rather constitute isolated instances; and

(*4*) Existing mechanisms for the enforcement of the State law, rule, or policy referred to in paragraph (i)(6)(ii)(B)(*1*) of this section are such that the instances of noncompliance are unlikely to recur in the future.

(iii) *Substantial compliance* with Section 223(a)(14) requires the achievement of a 75% reduction in the number of juveniles held in adult jails and lock-ups by December 8, 1985 and that the State has made an unequivocal commitment, through appropriate executive or legislative action, to achieving full compliance within two additional years.

(7) *Monitoring Report Exceptions.* States which have been determined by the OJJDP Administrator to have achieved full compliance with Section 223(a)(12)(A) and compliance with Section 223(a)(13) of the Juvenile Justice Act and which wish to be exempted from the annual monitoring report requirements must submit a written request to the OJJDP Administrator which demonstrates that:

(i) The State provides for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to enable an annual determination of State compliance with Sections 223(a)(12)(A), (13), and (14) of the JJDP Act;

(ii) State legislation has been enacted which conforms to the requirements of Sections 223(a)(12)(A) and (13) of the Juvenile Justice Act; and

(iii) The enforcement of the legislation is statutorily or administratively prescribed, specifically providing that:

(A) Authority for enforcement of the statute is assigned;

(B) Timeframes for monitoring compliance with the statute are specified; and

(C) Adequate sanctions and penalties that will result in enforcement of the statute and procedures for remedying violations are set forth.

(j) *Juvenile Crime Analysis.* Pursuant to Section 223(a)(8)(A) and (B) the State shall conduct an analysis of juvenile crime problems and juvenile justice and delinquency prevention needs.

(1) *Analysis.* The analysis must be provided in the multi-year application. A suggested format for the analysis is provided in the Formula Grant Application Kit.

(2) *Product.* The product of the analysis is a series of brief written problem statements set forth in the application that define and describe the priority problems.

(3) *Programs.* Applications are to include descriptions of programs to be supported with Juvenile Justice Act formula grant funds. A suggested format for these programs is included in the application kit.

(4) *Performance Indicators.* A list of performance indicators must be developed and set forth for each program. These indicators show what data will be collected at the program level to measure whether objectives and performance goals have been achieved and should relate to the measures used in the problem statement and statement of program objectives.

(k) *Concentration of State Effort.* Pursuant to Section 223(a)(8)(C) the State shall assure that it has on file a plan for the concentration of State efforts as they relate to the coordination of all State juvenile delinquency programs with respect to overall policy and development of objectives and priorities for all State juvenile delinquency programs and activities.

(l) *Annual Performance Report.* Pursuant to Section 223(a) and Section 223(a)(21) the State Plan shall provide for submission of an annual performance report. The State shall report on its progress in the implementation of the approved programs, described in the three-year plan. The performance indicators will serve as the objective criteria for a meaningful assessment of progress toward achievement of measurable goals.

(m) *Equitable Distribution of Juvenile Justice Funds and Assistance to Disadvantaged Youth.* The State shall assure that it complies with Sections 223(a)(7) and (16) of the JJDP Act.

(n) *Advanced Techniques.* The State shall assure that it complies with Section 223(a)(10) of the JJDP Act.

(o) *Analytical and Training Capacity.* The State shall assure that it complies with Sections 223(a)(11) and (12) of the JJDP Act.

(p) *Equitable Arrangements for Employees Affected by Assistance Under the Act.* Pursuant to Section 223(a)(18) the State shall assure that fair and equitable arrangements are made to protect the interests of employees affected by assistance under the Act.

(q) *Non-Supplantation.* The State shall assure that it complies with Section 223(a)(20) of the JJDP Act.

(r) *Technical Assistance.* States shall include, within their plan, a description of technical assistance needs. Specific direction regarding the development and inclusion of all Technical Assistance needs and priorities will be provided in the "Application Kit for Formula Grants under the JJDPA."

(s) *Other Terms and Conditions.* Pursuant to Section 223(a)(22) of the JJDP Act, States shall agree to other terms and conditions as the Administrator may reasonably prescribe to assure the effectiveness of programs assisted under the formula grant.

§ 31.304 Definitions.

(a) *Private agency.* A private non-profit agency, organization or institution is:

(1) Any corporation, foundation, trust, association, cooperative, or accredited institution of higher education not under public supervision or control; and

(2) Any other agency, organization or institution which operates primarily for scientific, educational, service, charitable, or similar public purposes, but which is not under public supervision or control, and not part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by IRS to be tax-exempt under the provisions of Section 501(c)(3) of the 1954 Internal Revenue Code.

(b) *Secure.* As used to define a detention or correctional facility this term includes residential facilities which have fixtures designated to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures.

(c) *Facility.* A place, an institution, a building or part thereof, set of buildings or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned and/or operated by public and private agencies.

(d) *Juvenile who is accused of having committed an offense.* A juvenile with respect to whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court.

(e) *Juvenile who has been adjudicated as having committed an offense.* A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender.

(f) *Juvenile offender.* An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law, i.e., a criminal-type offender or a status offender.

(g) *Criminal-type offender.* A juvenile offender who has been charged with or adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

(h) *Status offender.* A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

(i) *Non-offender.* A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes for reasons other than legally prohibited conduct of the juvenile.

(j) *Lawful custody.* The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law or of a judicial order or decree.

(k) *Other individual accused of having committed a criminal offense.* An individual, adult or juvenile, who has been charged with committing a criminal offense in a court exercising criminal jurisdiction.

(l) *Other individual convicted of a criminal offense.* An individual, adult or juvenile, who has been convicted of a criminal offense in a court exercising criminal jurisdiction.

(m) *Adult jail.* A locked facility, administered by State, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than one year.

(n) *Adult Lockup.* Similar to an adult jail except that an adult lock-up is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

Subpart E—General Conditions and Assurances

§ 31.400 Compliance with statute.

The applicant State must assure and certify that the State and its subgrantees and contractors will comply with applicable provisions of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90–351, as amended, and with the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93–415, as amended, and the provisions of the OJARS Financial and Administrative Guide for Grants, M 7100.1B.

§ 31.401 Compliance with other Federal laws, orders, circulars.

The applicant State must further assure and certify that the State and its subgrantees and contractors will adhere to regulations of the Department and other applicable Federal laws, orders and circulars. These general Federal laws and regulations are described in greater detail in the "Fiscal Year 1982 Application Kit for Formula Grants under the JJDP Act."

§ 31.402 Application on file.

Any Federal funds awarded pursuant to an application must be distributed and expended pursuant to and in accordance with the programs contained in the applicant State's current approved application and any advance funds will not be awarded for any program not specifically approved and clearly set forth in the current comprehensive application. Any departures therefrom, other than to the extent permitted by current program and fiscal regulations and guidelines, must be submitted for advance approval by the Administration or of OJJDP.

§ 31.403 Non-discrimination.

The State assures that it will comply, and that subgrantees and contractors will comply, with all applicable Federal nondiscrimination requirements, including:

(a) Section 815(c)(1) of the Justice System Improvement Act of 1979, as made applicable by Section 262(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended;

(b) Title VI of the Civil Rights Act of 1964;

(c) Section 504 of the Rehabilitation Act of 1973, as amended;

(d) Title IX of the Education Amendments of 1972;

(e) The Age Discrimination Act of 1975; and

(f) The Department of Justice Nondiscrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G.

Charles A. Lauer,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 81-[illegible] Filed 12-30-81; 8:45 am]

BILLING CODE 4410-18-M

[In a letter dated April 21, 1983, Senator Specter requested more responsive answers to several questions. Subsequent to the hearing the following responses were received from Mr. Regnery.]

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., April 21, 1983.

Mr. ALFRED S. REGNERY,
Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C.

DEAR MR. REGNERY: I would greatly appreciate your providing more responsive answers to several questions I propounded in connection with your confirmation hearing.

Question. (a) I asked for, and still look forward to receiving, your views of the Dependent Children's Protection Act, S. 520, and the Juvenile Incarceration Protection Act, S. 522.

Answer. (a) I cannot formulate a position on legislation until the Department of Justice, in conjunction with the Office of Management and Budget, has done so. For me to speak publicly about these bills prior to the Attorney General's opportunity for review would be inappropriate.

Question. (b) I think it most important that the reporting requirements of the Juvenile Justice and Delinquency Prevention Act be met. Following up on questions I have previously asked, I think it appropriate that we receive your analysis, evaluation, "brief but comprehensive plan" and recommendations regarding Federal juvenile delinquency programs. I am also most concerned by your answer that no federal agencies have submitted the annual juvenile delinquency development statement that you are mandated to require by section 204(1) of the Act.

Answer. (b) I agree that it is appropriate that the Annual Analysis called for in the legislation (Sec. 204(b)(5)) be submitted in a timely fashion. When I came to OJJDP in November 1982, one of the reports in question (the Fifth) was completed and not yet forwarded, and one (the Sixth) was just being completed. One of my first actions was to have staff review each of the reports to ensure that they were consistent with the plans, programs, policies, and procedures of this office. This review was completed and the Fifth and Sixth Analysis and Evaluations are being prepared for their submission to the Attorney General, Congress, and the President. The Office's Concentration of Federal Efforts Program is also working on the Seventh Analysis Evaluation. This report is due December 31, 1983. It is the first report for which I will have full responsibility for developing. The report will be submitted on time, and will be responsive to the report requirements in the JJDP Act.

Concerning the submission of delinquency development statements by other federal agencies, no agency has submitted a delinquency development statement since the original legislation was passed in 1974. I am in the process of reviewing the requirements related to delinquency development statements, and will be better able to respond as to why no agency has not developed a statement after this report is completed.

Question. (c) I asked about your program plans for this year and ask, again, that you supply the requested information. I am seeking an accounting of how funding has been obligated so far, what plans you have for the remainder and a better description of both sets of projects and programs.

Answer. (c) I attach a copy of the draft 1983 Program Plan which I sent on April 20th to the National Advisory Committee (NAC) on Juvenile Justice and Delinquency Prevention. The plan contains a narrative description of OJJDP's fiscal year 1983 planned projects and is close to finality. There remain a few decisions to be made and for these, I am seeking the advice of the members of the NAC. A chart outlining fiscal year 1983 obligations to April 22, 1983, is also attached.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION,
Washington, D.C., April 20, 1983.

To: National Advisory Committee
From: Alfred S. Regnery, Administrator Designate OJJDP
Subject: Fiscal (FY) 1983 Program Budget Plans

The subject plans are presented for your review and comment. There will be a few (very few) more projects initiated before the end of fiscal year 1983, but goals and/or cost estimates on these are not yet clear enough to add them to the list. As usual, you will be kept informed and your comments seriously considered.

Please understand that as the process advances on each project, the plan and estimate may be modified.

Status of funds (as of April 22, 1983)

Formula grant funds:	
Fiscal year 1983 Allocation	$43,095,000
Obligated to Date	26,858,625
Balance	16,236,375
Technical assistance:	
Fiscal year 1983 Allocation	1,804,000
Obligated to Date	1,418,042
Balance	385,958
Concentration of Federal effort:	
Fiscal year 1983 Allocation	900,000
Obligated to Date	45,964
Balance	854,036
National Institute of Juvenile Justice and Delinquency Prevention:	
Fiscal year 1983 Allocation	7,436,000
Obligated to Date	1,584,088
Balance	5,851,912
Special emphasis:	
Fiscal year 1983 Allocation	14,365,000
Obligated to Date	1,066,294
Balance	13,298,706
	[1] 544,000
Balance	$12,754,706

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[1] Drug suppression commitment.

OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

FISCAL (FISCAL YEAR) 1983 PROGRAM BUDGET PLANS

Prevention

Delinquency Intervention and Runaway Children. New $1,000,000.—Demonstration replications in other cities of successful New York "Covenant House" program. Provides health care, counseling, and support to vagrant juveniles and assists them to return to family or otherwise enter upon a positive life.

Prevention of Delinquency Through Alternative Education. Continuation $400,000.—This is the last project of an extensive program to prevent juvenile delinquency through projects designed to keep students in schools, prevent unwarranted and arbitrary suspensions and expulsions, dropouts, pushouts and truancies. An evaluation is in process that will report on effectiveness for consideration by school authorities.

Alternative Education Program Technical Assistance. Continuation (Begun 9/81; $326,828) $244,932.—Provides technical assistance to Special Emphasis Program grantees, to states, and to others engaged in alternative education projects.

Close-Up Foundation. Continuation (Begun 2/20/81; since then $896,596) $300,000.—Introduces delinquents to positive relations with society and government through a coordinated set of citizenship-based participatory activities, including trips to state and national capitals with the objective of reorientation.

Consortium of Universities; National Street Law Institute. Continuation (Begun 11/16/78; $1,291,000) $200,000.—The Institute educates people about the effects of law on everyday life, through school-based programs, law school programs, out-of-school programs and clearinghouse assistance.

Center for Civic Education, Law in a Free Society. Continuation (Begun 5/1/82) $190,000.—Helps youth in all grades develop increased understanding of the fundamentals, principles, processes, and values essential to preservation and improvement of our free society. Part of Law-Related Education Program.

National Delinquency Prevention Education. (Begun 2/17/79; since then $1,232,000) $190,000.—Will help institutionalize the Law Related Education Program in California, Michigan, and North Carolina. Provides training and consulting for teachers, conducts meetings relevant to implementation.

Education in Law and Juvenile Justice. Continuation (Begun 11/16/78; since then $1,038,000) $125,000.—Project objectives are now to move from awareness to implementation and institutionalization of the Law Related Education Program; three states are targeted for coordinated program development. Operated by ABA.

National Program to Improve Juvenile Justice and Reduce Juvenile Delinquency. Continuation (Begun 2/26/79; since then $822,000) $100,000.—Phi Alpha Delta law fraternity will mobilize its membership to help improve teaching of Law Related Education; it will collaborate with state and local organizations in implementing LRE in California, Michigan, and North Carolina.

Employment Related Training and Technical Assistance for the Serious and Violent Juvenile Offender. New (Small study in 1982). $100,000.—Will provide effective employment and training services to juvenile justice workers to enable them to develop private sector jobs and careers for serious and violent juvenile offenders.

National Center for the Assessment of Juvenile Delinquency Prevention. Continuation (Begun 7/77; since then $3,321,000) $325,000.—The Assessment Center collects, synthesizes, and analyzes information on delinquency; completes, revises and coordinates the publication of earlier reports; updates the Center's information dissemination capacity; and provides specific information in response to requests from NIJJDP.

Association for Children with Learning Disabilities—Research and Development Project. Continuation (Begun 4/8/82; $85,000) $898,000.—Six training seminars will be conducted to present the results and implications of the project which investigated the linkage between learning disabilities and juvenile delinquency and tested a remediation treatment program for offenders.

Analysis of Delinquent Careers Based on National Court Case Data. New $75,000.—Results will be compared with data from other projects in local jurisdictions to begin to assess the comparability of patterns of career development.

Concentration of Federal Effort Support. $900,000.—This effort is mandated by the Act, which also requires a minimum allocation. In addition to supporting the activities of the Federal Coordinating Council for Juvenile Justice and Delinquency Prevention, the funds will help support cooperative projects in which OJJDP and one or more additional agencies of the Council participate. In fiscal year 1983, most of these, as yet undetermined, will be in the area of delinquency prevention.

Systems improvement

Suppression of Drug Distribution to Juveniles. New $555,000.—In a special approach to countering the sale of drugs and alcohol to juveniles, this experimental action program will use the advanced integrated crime apprehension (ICAP) system now operating in a number of police departments. Five selected departments will concentrate significant resources and attention on the problem with the cooperation of the courts, prosecution, and youth services.

Drug Suppression Program Evaluation. New $150,00.—A careful independent evaluation will be conducted of the experimental program to ascertain its effectiveness.

Habitual Serious Juvenile Offender. New $1,800,000.—Special attention will be given in this experimental program to control and treat the small percentage of offenders who commit a disproportionately large share of juvenile crimes. Concerned agencies of juvenile justice will participate under the leadership of the prosecutor.

"Operation Hardcore". New $900,000.—Demonstration replications of successful Los Angeles juvenile gang delinquency prevention program. Prosecutors, youth service agencies, and others working together to modify criminal characteristics of leadership role models.

Corrections Initiative. New $500,000.—Juvenile corrections improvement initiative; program being designed.

Victims of Crime Initiative. New $500,000.—The report of the President's Task Force on Victims of Crime recommends a number of steps that involve juvenile justice and delinquency prevention; these funds are set aside to be used in a program(s) being designed for OJJDP to implement appropriate recommendations.

Technical Assistance for Improving the Efficiency and Effectiveness of the Juvenile Justice System. Continuation (Old program; $6,827,000) $750,000.—Provides technical assistance for juvenile justice system enhancement to state and local agencies.

Corrections Improvement and Jail Removal Technical Assistance. Continuation $335,000.—This continues a contract for provision of Technical Assistance by the

Community Research Center to states and communities that was initiated in July 1981.

Non-Profit Juvenile Justice Management Training. New $50,000.—Workshops for managers of non-profit organizations providing treatment or services to juveniles to help them improve administrative and management skills.

Private Sector Corrections Training. New $100,000.—Curriculum development and subsequent training for community-based juvenile corrections managers.

Prosecutor Training. Continuation (Begun 6/1/82; $180,000) $180,000.—A curriculum is being developed by the National College of District Attorneys and will be used for training of prosecuting attorneys who work primarily in juvenile courts.

Public Defender Training. New $75,000 vs. $180,000 for prosecutors. A curriculum will be developed for training supervisory public defenders.

Law Enforcement Training at Glynco, Georgia. Continuation (Begun 7/1/82; since then $250,000) $250,000.—Three-day pragmatic, problem-solving seminars for law enforcement executives to introduce management strategies for increasing departmental effectiveness through integration of juvenile services into the mainstream of law enforcement activities.

Juvenile and Family Court Training Project. Continuation (Begun 2/76; since then $1,825,000) $300,000.—Training for judges and court related personnel at the school in Reno. Training provides information about current developments in juvenile and family case law, and treatment and sentencing options.

Serious and Violent Juvenile Offender Seminars. Continuation (Begun 5/1/82; $205,000) $205,000.—Specialized training and exchanges for judges about serious and violent juvenile offenders.

Courts Technical Assistance. New $50,000.—The National Council of Juvenile and Family Court Judges conducts extensive training under grants from OJJDP; this will allow follow-up technical assistance after the trainees return to their courts.

Juvenile Court Seminars. Continuation (Begun 8/2/82; since then $32,000) $60,000.—The Institute for Court Management will conduct three seminars for juvenile justice professionals on management training, policy, and strategies relating to programs handling serious and repetitive juvenile offenders.

Serial Child Murders Information System. New $50,000.—A new system and analytical approach is being developed to accumulate investigatory information about homicides. Proponents, who are highly regarded and experienced homicide investigators, contend that with advanced information analysis capability we should be able to detect the initiation of a series of crimes by the same offender even in different localities. OJJDP is working in conjunction with NIJ and others and will support that part of the effort that is of concern to juvenile justice.

Juvenile Records Improvement and Use. New $400,000.—This will be a research project to ascertain the quality of juvenile justice and delinquency records and how they are being used; then to recommend steps to improve the quality of records and their utilization to enhance juvenile justice.

National Center for the Assessment to the Juvenile Justice System. Continuation (Begun 11/76; since then $2,621,000) $375,000.—The Center collects, synthesizes, and analyzes information on the current juvenile justice system; completes, revises, and coordinates the publications of earlier reports; updates the Center's information dissemination capacity; and provides specific information in response to requests from NIJJDP.

Violent Offender Research and Development Program. I. Continuation (Begun 10/1/80; since then, $4,194,000+) $2,800,000.—A program to test a promising research and development model for treating violent juvenile crime in Phoenix, Memphis, Boston, and Newark.

Evaluation of the Violent Offender Research and Development Programs. Continuation (Begun 9/30/80; since then, $1,382,000) $275,000.—Evaluation of above.

Juvenile Court Intervention Impact. Continuation (Begun 8/2/82; $200,000) $306,000.—A test in Salt Lake City of the impact of a wide range of court dispositions to measure their impact on delinquent behavior, attitudes and juvenile justice costs; differences between institutions and probational alternatives will be examined.

National Uniform Juvenile Justice Reporting System. Continuation (Begun 12/75; since then $2,019,000) $300,000.—This program collects, analyzes, and disseminates information from juvenile courts to build an understanding of trends and processes.

Juvenile Information System and Records Access. Continuation (begun 3/75; since then $778,000) $200,000.—Assists jurisdictions to develop information systems that also produce data on dispositions.

Children in Custody Census. Continuation (Begun by BJS 5/73; picked up by OJJDP 10/79 since then $566,000) $250,000.—Periodic reports by the Bureau of

Census on selected characteristics of the residents, facilities and operations within the juvenile custody system, both national and state-by-state, to assist authorities in assessing trends, and in developing relevant policies and legislation.

National Study of Juvenile Institutional Release Decision-Making. Continuation (Begun 10/1/79; since then $497,000) $250,000.—Analysis of the process from commitment to a state juvenile correctional agency or institution to release; identification of the roles of various decision-makers, significant criteria and procedures, resources, and internal and external pressures affecting decisions. Particular attention to youth committed for serious and violent crimes.

Automated Archive of State Juvenile Codes. Continuation ($75,000) $200,000.—Compilation, review, and comparative analysis of juvenile codes and new developments in state legislation.

Alternatives

Project New Pride. Continuation (Begun 12/70; by LEAA; since then heavy investment) $1,300,000.—An alternative to incarceration program for serious multiple offenders. Effective and much less expensive than institutionalization. This year, the program will complete the replication and evaluation at four sites and will develop a strategy for providing training and other forms of information and assistance to stimulate acceptance in many communities.

Restitution Marketing. New $1,500.000.—Restitution has proven to be an effective alternative sanction for adjudicated offenders when implemented intelligently. The program will provide a specific model(s) and will inform judges and other concerned officials of its applicability by such media as published guidance materials, training, conferences and other types of technical assistance.

"Helping Hand" Program. New $270,000.—This program will replicate and demonstrate the successful California "Wing Spread" program at four sites to be selected. Youth are diverted from the juvenile justice system. Volunteers and community service agencies are utilized.

Training in Handling of Serious/Violent Offender in Community Based Settings. New $200,000.—Workshops for professionals who operate community-based programs for these offenders based on the curriculum previously developed by the National Youth Workers Alliance under a previous project.

Exploring Careers in Law Enforcement and Criminal Justice. Continuation (begun 8/2/76; since then $183,000) $44,500.—This Explorer Scout program operated by Boy Scouts of America involves young people, male and female, aged 14-20 in community service, crime prevention, juvenile delinquency prevention and leadership development. The subvention, matched by BSA, supports the national programming and administration effort.

Combinations

Training in Juvenile Justice for State Legislators. New $200,000.—A series of workshops, seminars, and other types of training will be held for state legislators who are particularly concerned about juvenile justice issues. The objective is to provide up-to-date information about juvenile delinquency and legislation and initiatives being undertaken in other states.

Minority Research Program. New $400,000.—Two projects are being designed; one, a research project, and the other, and effort to stimulate additional research.

Juvenile Delinquency and Justice Issues Seminars. New $200,000.—Harvard University—Kennedy School will organize policy development seminars in current and expected issues of major concern.

Assessment of Training Impact. New $100,000.—Millions of dollars have been spent by OJJDP in various training programs and more will continue to be spent. This evaluation will be the first independent assessment of each current program, its efficiency and overall management with the objective of learning where improvements may be needed.

Standardization of the Juvenile Justice Archive. New $100,000.—Will standardize the data collected between 1975 and 1981 and the data contained in the national juvenile justice archive for the purpose of trend analysis.

Juvenile Justice Clearinghouse. Continuation (A reference service (NCJRS) was begun by NIJ in 1971; OJJDP funds the Clearinghouse as a special part) $400,000.—National Criminal Justice Reference Service (NCJRS) assistance to juvenile justice and delinquency prevention community. A major source of information and widely used.

Visual Display of Quantitative Information. New $60,000.—Will compile in one volume statistics relating to juvenile justice in organized and graphic presentations.

Consulting Support. Continuing and New $80,000.—A contractor has been used, 3/27/80—1/16/83 ($699,000), to obtain publicly credible expert reviews of plans and reports of interest to OJJDP; half of the above sum is being continued with the contractor as an addition to its contract with NIJ. The other half will be used to obtain such consulting support directly.

Question. (d) I would appreciate a more responsive answer to my question whether you will seek to influence or control the program priorities to which the States allocate their formula grant funds.

Answer. (d) I have begun the process of reviewing the formula grant guidelines. In that process, I am seeking comment from state advisory groups, governors, attorneys general, state criminal justice planning councils, and other interested parties. I also established, on April 15, an OJJDP task force to study the issue and to advise me whether changes should be made, and if so, what they should be. I will not know until the results of these two efforts lie in front of me what actions I may take, if any. In any case, no changes will be made before fiscal year 1984.

Question. (e) I would also appreciate a more responsive answer to my questions about the March 22 GAO report "Improved Federal Efforts Needed to Change Juvenile Detention Practices," most particularly the recommendations you were still reviewing.

Answer. (e) We are still analyzing the report. It appears that GAO compared state practices with the NAC adopted standards and not against the requirements of the JJDP Act of 1974, as amended. Thus, GAO's findings were based neither on our legislation nor upon the implementing regulations of the formula grants program (28 CFR 31.303(i)).

GAO's discussion of questionable uses of secure detention apparently accurately portrays actual juvenile detention practices within the several states. However, due in part to the difference in reporting periods addressed by GAO and this office (i.e. GAO was reporting data from 1980 and 1981, while our formula grants division information was derived from the 1982 monitoring reports) and failure to take cognizance of our de minimus exceptions to full compliance, discrepancies do exist.

I continue to examine each of the recommendations for its accuracy. I will take necessary action to ensure this office's compliance with the statute.

ADDITIONAL STATEMENT FOR THE RECORD

NATIONAL COUNCIL OF JEWISH WOMEN,
New York, N.Y., March 25, 1983.

DEAR SENATOR: On behalf of the 100,000 members of the National Council of Jewish Women (NCJW), I wish to express serious reservations over the appointment of Alfred S. Regnery as Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Our concern with this appointment is rooted in NCJW's long history of involvement in juvenile justice which has resulted in our establishing over 100 service projects in local communities. Having had no previous experience in the field of juvenile justice, Mr. Regnery appears to be considerably less qualified to assume this postion than were the previous Administrators of the office.

Recent public statements made by Mr. Regnery further demonstrate his lack of ability and commitment to carrying out the legislative mandates of the Juvenile Justice and Delinquency Prevention Act. In separate addresses to the National Advisory Committee (OJJDP), and the National Council of Juvenile and Family Court Judges, Mr. Regnery stated that OJJDP is not a social agency, and that prevention efforts should be limited only to assisting juvenile delinquents from becoming career criminals. We dispute this statement. The intent of Congress when it passed the Act was to encourage on-going delinquency prevention programs by both the public and private sectors, including schools, as well as to assist those in trouble with the law. As Acting Administrator, Mr. Regnery has already made sizeable cuts in contracts to grantees dealing with Law-Related Education Research and Demonstration Programs— programs which attempt to meet the goal of delinquency prevention. These policies would seriously inhibit the Office's efforts in this area.

He has also stated that the 1980 Amendment to the Juvenile Justice and Delinquency Prevention Act mandment to the removal of juveniles from adult jails and lockups had achieved sufficient progress, so that formal grant resources in many states could now be redirected toward other program priorities. Again, we seriously question this statement. The jail removal amendment was a most significant effort by Congress. NCJW is firmly committed to the requirement that detention and incarceration of juveniles be in facilities separate from adults. However, preliminary review of the 1982 jailing statistics indicates there has been little progress in eliminating the jailing of juveniles. To divert attention, technical assistance or money away from this effort would not be following the intent of Congress and would allow these destructive practices to continue.

As an organization which worked for the passage of the Juvenile Justice and Delinquency Prevention Act, we believe that Mr. Regnery's appointment as administrator of OJJDP would be seriously detrimental to the further implementation of the mandates provided by the Act and would violate the intent of Congress. We hope that the objections stated in this letter are explored by the Senate Judiciary Committee at the confirmation hearings scheduled for April 6.

Sincerely,

BARBARA A. MANDEL,
National President.

Letter mailed to the following people:

Strom Thurmond, Senate Judiciary Committee, Washington, D.C.; Charles McC. Mathias, Jr. Senate Judiciary Committee, Washington, D.C.; Paul Laxalt, Senate Judiciary Committee, Washington, D.C.; Orrin G. Hatch, Senate Judiciary Committee, Washington, D.C.; Robert Dole, Senate Judiciary Committee, Washington, D.C.; Alan K. Simpson, Senate Judiciary Committee, Washington, D.C.; John P. East, Senate Judiciary Committee, Washington, D.C.; Charles E. Grassley, Senate Judiciary Committee, Washington, D.C.; Jeremiah Denton, Senate Judiciary Committee, Washington, D.C.; Arlen Specter, Senate Judiciary Committee, Washington, D.C.; Joseph R. Biden, Senate Judiciary Committee, Washington, D.C.; Edward M. Kennedy, Senate Judiciary Committee, Washington, D.C.; Robert C. Byrd, Senate Judiciary Committee, Washington, D.C.; Howard M. Metzenbaum, Senate Judiciary Committee, Washington, D.C.; Dennis DeConcini, Senate Judiciary Committee, Washington, D.C.; Patrick J. Leahy, Senate Judiciary Committee, Washington, D.C.; Max Baucus, Senate Judiciary Committee, Washington, D.C.; Howell Heflin, Senate Judiciary Committee, Washington, D.C.

CONFIRMATION HEARING ON WILLIAM H. BARBOUR, JR.

WEDNESDAY, APRIL 13, 1983

U.S. Senate,
Committee on the Judiciary,
Washington, D.C.

The committee met, pursuant to notice, in room SD-226, Dirksen Senate Office Building, commencing at 2 p.m., Hon. Strom Thurmond (chairman of the committee) presiding.

Staff present: Duke Short, chief investigator; Bill Christensen and Allan Spence, investigators; and Mary Lynn Batson, investigative clerk.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The Chairman. The committee will come to order.

The purpose of this meeting today is to consider the confirmation of Mr. William H. Barbour, Jr., of Mississippi, to be U.S. district judge for the Southern District of Mississippi.

Mr. Barbour, Senator Cochran is with you and I doubt if he wants to stay long, but we are glad to have him and you may stay as long as you wish.

STATEMENT OF HON. THAD COCHRAN, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator Cochran. Mr. Chairman, let me say at the outset that Senator Stennis was here and was prepared to recommend to the committee the confirmation of Mr. William Barbour. Senator Stennis was called to the floor in connection with another nomination that is pending. I understand he has dictated a statement to the reporter and we would like to have that statement included in the record.

The Chairman. Without objection, Senator Stennis' statement will be included in the record.

Senator Cochran. Mr. Chairman, it is one of those unique opportunities, as a Senator, to make a recommendation to the President concerning an appointment to the Federal bench. In many cases, it is not an easy decision, because there are many people who are available and well qualified. In my efforts to try to make a recommendation to the President for the filling of this vacancy in the Southern District of Mississippi, I have made a recommendation that is certainly one of distinction in many ways.

William H. Barbour, Jr., is not only well educated and experienced as a lawyer in a family law practice in Yazoo City, Miss., but he is a person of unquestioned moral character and good judgment. These qualities are most important on the Federal bench.

I believe the people of Mississippi and the Federal judiciary are to be complimented by his acceptance of this responsibility if he is confirmed by the Senate.

It is not an easy job being a Federal judge, and there is much sacrifice attendant to accepting the responsibility of a Federal district judge. However, William Barbour is willing to make those sacrifices, and I am convinced that the people of our State will be better off because of that sacrifice. He will contribute greatly to the quality of the work that is done by the district court in the Southern District of Misssissippi.

I remember William Barbour as a law student at Ole Miss. He was one of the finest students in the law school at that time and was the person selected to be president of the Moot Court Board.

I remember his being selected by our legal fraternity to represent us at an international meeting in Canada. He was the kind of person that we were proud to have representing us, and I believe the people of Mississippi in time will take great pride in the quality of the service that he renders on the Federal bench.

He was educated not only at Ole Miss but Lawrenceville and Princeton. He studied at New York University. He has a wide range of experience because his family law practice reaches into the fields of real estate, banking, and civil and criminal cases. He has tried cases in Federal courts and State courts, representing plaintiffs as well as defendants. Because of this wide range of practical experience he will be well equipped to serve with distinction on the court.

William Barbour is community minded, Mr. Chairman. He has been involved in civic activities of many kinds. He is active with the Boy Scouts and his church. He is a fine citizen, and I can say to the committee, Mr. Chairman, I can recommend him without any qualification or hesitancy in any way. I am confident the committee will be pleased to recommend his confirmation to the Senate.

Thank you, Mr. Chairman.

The Chairman. Mr. Barbour, we are glad to have you here, and you are fortunate to have such an able Senator like Senator Cochran sponsoring you. He has given you a glowing recommendation. If you live up to half of what he said, you will make a good Federal judge.

You are also fortunate to have the endorsement of the senior Senator from Mississippi, Senator Stennis, who is a very able gentleman.

[The dictated statement of Senator Stennis follows:]

Statement of Senator John C. Stennis, a U.S. Senator From the State of Mississippi.

Mr. Chairman, this statement is in support of the nomination of Mr. William H. Barbour, Jr., to be U.S. District Judge for the Southern District of Mississippi.

I have known Mr. Barbour for several years; I have known his family for many years. He is a very capable man, a man of character and honor in every way and is from a family of successful lawyers.

I have talked at length with him about his duties as a Federal judge, and I am fully satisfied he not only has the capacity but he will have the dedication and devotion to duty that would go with this highly important office. He will bring honor to himself and to the office that he holds.

I am supporting the nomination fully not only by this endorsement but will do so on the floor of the Senate.

Thank you, Mr. Chairman.

The CHAIRMAN. Do you swear the testimony you give in this hearing will be the truth, the whole truth and nothing but the truth, so help you God?

TESTIMONY OF WILLIAM H. BARBOUR, JR., NOMINEE, U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF MISSISSIPPI

Mr. BARBOUR. I do.

The CHAIRMAN. Would you like to introduce your family?

Mr. BARBOUR. I have my wife here, Stewart Fair Barbour, who is sitting in the front row.

The CHAIRMAN. We are glad to have you with us, Mrs. Barbour.

Do you have any statement you want to make? I have prepared some questions I would like to ask.

Mr. BARBOUR. No, sir, except I do appreciate the kind remarks of Senator Cochran and Senator Stennis and I hope I can live up to the recommendations of both of those gentlemen.

The CHAIRMAN. There is not very much more you can add to what Senator Cochran has said.

Mr. Barbour, you have been a practicing attorney since 1966. Now you have been nominated for the position of U.S. district judge. What do you feel will be the most rewarding aspect of serving in this capacity?

Mr. BARBOUR. I look forward to serving as U.S. district judge. The judgeship is a goal or something that any lawyer would be happy to look at and want to serve in.

Judgeships on the district level are those in the federal system which deal directly with the people. People have to come before those courts and have their cases to be decided in the first instance by those courts.

I have enjoyed working with people. My practice has been a people-related practice, and I hope to be of service to the people through this better position.

The CHAIRMAN. Mr. Barbour, do you feel that your position as youth counselor for the Yazoo County Youth Court will assist you in performing your duties as a district judge, and, if so, how?

Mr. BARBOUR. Mr. Chairman, I served as a youth counselor in Yazoo County for about 11 years. As such, I had to counsel with delinquent youths on a weekly basis. The counseling was really in the form of a quasi-judicial type of position. I was dealing with youths primarily charged with breaking the law. By working with them in this fashion, working with the police and dealing with these youths under the circumstances, I think I have gained a great deal of experience in how to deal with those charged with crimes.

Another aspect of the youth counselor's job for the biggest part of those 11 years was acting as prosecutor for the youth court. I feel that that gave me a great deal of experience in prosecuting cases. The cases which we had were bound in Mississippi and elsewhere by regular rules that apply to any criminals with some additional rights that juveniles have.

I feel that by acting in that prosecutorial position that I gained an insight into working with prosecutors and with the police in enforcing our laws and working in that fashion.

The CHAIRMAN. Mr. Barbour, in response to a portion of the committee's questionnaire concerning judicial activism, you stated, "I expect to confine my orders and rulings to statutory and constitutional application based on the principle of stare decisis."

What is the proper application of stare decisis in constitutional law, as you view it?

Mr. BARBOUR. Our country is controlled by a great document called the U.S. Constitution. I believe that not only should the Federal courts but all courts should recognize the Constitution as the supreme authority under our laws. I believe in applying that Constitution to any cases that might come before me.

Of course, the doctrine of stare decisis binds the lower court as to particular interpretations by a higher court and, more specifically, by the Supreme Court of the United States to certain actions.

However, in cases where I am not bound by stare decisis, I would certainly think that the Constitution of the United States is the controlling law on the subject.

The CHAIRMAN. Specifically, what is the duty of a Federal judge when confronted with a case in which one of the precedents of his court clearly conflicts with the Constitution as that judge interprets it?

Mr. BARBOUR. Senator, I think I may have already indicated that in my former answer, but I think that the Constitution of the United States is the overriding document in any decision with which a Federal court judge is faced.

The CHAIRMAN. In other words, I presume what you were saying is that you would stand by the Constitution as you construed it regardless of what the precedents had been?

Mr. BARBOUR. Yes, sir.

The CHAIRMAN. You would follow stare decisis and follow the precedents unless you disagreed with the view of the Constitution?

Mr. BARBOUR. Yes, certainly as much as I could and particularly where the precedents were not clear in a particular instance and certainly the Constitution of the United States would be followed.

The CHAIRMAN. Mr. Barbour, would you tell the committee how you would handle an instance which counsel for one of the parties in your court was obviously not a skilled litigator and was not prepared to adequately represent the interest of his or her clients.

Mr. BARBOUR. Senator, this would be one of the hardest things for a trial judge to deal with, in my opinion. I know as a practicing attorney it is extremely hard to be prepared in a case and to have an attorney on either side either not be prepared or not be capable of handling that particular case. It gets to be a real problem to both sides in deciding what, from a judicial standpoint, should be done in order to protect the interests of both sides.

I do believe that parties have a right to choose their own counsel, and, when they do choose their counsel, the court should also give the opposing side with competent counsel the right that it is entitled to by having chosen more competent counsel than the other party.

Under these circumstances, I would be inclined to allow the lawyers, regardless of their capabilities, to try the case and to let either myself as the finder of the fact or the jury as the finder of the fact to do its job in deciding a case.

The CHAIRMAN. We have a sentencing bill which we have been working on that provides for a sentencing commission to establish uniformity in sentencing more or less and a judge would have to explain if he goes above or below those sentences. Do you feel it would be helpful to you as a U.S. district judge to have such a sentencing commission?

Mr. BARBOUR. Senator, this is an area of concern to me, not having had to reach a sentencing proposition at this point. As the Senator is well aware, the judges have a range of sentences they can hand down, and certainly I think it constitutional for the judges—and under the guidelines or within the bounds the Congress has given for particular sentences—to fit within those sentences. However, I think the probation and parole commission has oftentimes stepped in and entered its judgment over the top of what the judge's judgment in sentencing has been.

The CHAIRMAN. I might say in this bill, it does away with that.

Mr. BARBOUR. Under those circumstances, the judges would and I would certainly like to have discretion in particular cases, but certainly if the range of discretion were narrowed, I think it would be helpful. Certainly anything that Congress did along those lines would be the law and would be recognized by me as such.

The CHAIRMAN. Mr. Barbour, I consider judicial temperament to be a prerequisite for a Federal judge. Would you please give me your thoughts on this subject.

The reason I say that, I have seen some Federal judges exercise too much temperament in the courtroom toward attorneys, toward litigants, toward jurors, toward witnesses, and I have always felt that the higher a man gets in life, the more lonely he should be. I think it very disgusting when a judge shows such temperament in the courtroom which is unwarranted.

Mr. BARBOUR. I would certainly hope throughout my judicial career I would maintain the same attitude. My attitude would be that I am there to serve the cause of justice. It would not be my court but the court of the litigants and the attorneys, and my attitude would go a great way toward serving justice.

I would understand the Senator's position on that. But I have seen some judges and have heard some complaints about some judges who had overstepped what I consider to be proper judicial attitude toward lawyers and toward litigants.

I would hope to show all lawyers, and all litigants who came into my courtroom courtesies in conformance with moving justice along in the fairest and most expeditious manner.

The CHAIRMAN. In some instances, the Supreme Court has not only entered fields where I did not think it had authority but they have actually abridged the laws, for instance, in abortion matters.

The Constitution clearly provides that the Federal Government is a government of limited powers. You would not think so the way Congress has acted and the courts and the executive branch in the last number of years, but under the Constitution, the Federal Government has only the power granted to it in the Constitution or some amendment since the adoption of the Constitution.

Therefore, while a lot of jurisdictions are reserved to the States, in many cases, judges have taken over the running of the school districts and even attempted to levy taxes in some cases. They have taken over running hospitals and other State institutions. I do not know whether they want to exercise their authority to show how much power they have, but to me it is very obnoxious when they go beyond their scope of duties.

The division of powers should be observed just like the separation of powers with the three branches which should be separated, but the division of power between the Federal Government and the States is one abused probably more than any other. I just wondered how you feel about these matters, because, to me, it is very important that our judges stay within their sphere and stay within the sphere of the Constitution.

Mr. BARBOUR. Senator, I am certainly in agreement with you on the fact that the Constitution of the United States does provide for separation of powers. There have been a number of substantial social issues which have been before our country as a whole within the last several years.

The Federal courts have adopted those cases or tried to take the solution of some of those social issue cases on several occasions, and I do not think that the courts are the proper forum in which to solve those social issues. I think the courts are there to protect the individual's rights, certainly, but I think the courts are also there to try cases on a case-by-case basis rather than to try to effect wide, sweeping social change. When you get into some of these cases, the courts become bogged down in administrative details because they have to continue supervision of cases for long periods of time and get into matters where there seems to be no end.

I believe that the courts should take less of these cases, should try them on an individual basis wherever possible, and should let the legislative branch solve as many problems as possible particularly in a social issue situation.

The CHAIRMAN. You are speaking about separation of powers. That is true, too, and I am speaking also about the division of powers between the Federal level and the State level.

Mr. BARBOUR. As the Senator knows, there is the matter of States' rights, and under the Constitution it has been debated for years and years by more scholarly minds than mine. However, I think the time has come for the States to have more responsibilities in these areas than the Federal Government.

The CHAIRMAN. They have them now under the Constitution, but the Federal judges and officials have overriden them in many cases, and I think they assumed the authority when they really did not have it under the Constitution.

Mr. BARBOUR. Senator, I can assure you that I will not be a judge who will be interested in trying to expand the Federal powers but, rather to contract them and give them back to the States.

The CHAIRMAN. There are so many who want to expand the Federal powers when they really do not have the constitutional authority to do so.

I think those are all the questions I have.

Do you have anything else you would like to say?

Mr. BARBOUR. No, sir.

The CHAIRMAN. We wish you a happy and successful tenure on the bench. We are very pleased that Senator Cochran has recommended you and we feel you will make a good judge.

Mr. BARBOUR. Thank you, sir.

The CHAIRMAN. We now stand adjourned.

[Whereupon, at 2:54 p.m., the committee recessed to reconvene subject to the call of the Chair.]

BIOGRAPHY

WILLIAM H. BARBOUR, JR.

NOMINEE, U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF MISSISSIPPI

Birth: February 4, 1941, Yazoo City, Miss.

Legal residence: Mississippi.

Marital status: Married to Stewart Fair Barbour, 3 children.

Education: 1959-1963—Princeton University, B.A. degree; 1963-1966—University of Mississippi School of Law, J.D. degree; 1966—New York University School of Law.

Bar: 1966—Mississippi.

Experience: 1966 to present—Henry, Barbour & DeCell, Yazoo City, Miss.; 1971-1982—Youth counsellor, Yazoo County Youth Court.

CONFIRMATION HEARING ON: RICARDO H. HINOJOSA AND JOEL M. FLAUM

WEDNESDAY, APRIL 27, 1983

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 2:55 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Alan K. Simpson presiding.

Staff present: Duke Short, chief investigator; Bill Christensen, and Allan Spence, investigators; and Mary Lynn Batson, investigative clerk.

Senator SIMPSON. Well, on behalf of the Judiciary Committee, I regret the inconvenience to all of you, to the nominees and also to my colleagues.

Senator John Tower, you have been in and out of this room a time or two, and without further ado, we would be very honored to have your remarks.

STATEMENT OF HON. JOHN TOWER, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator TOWER. Thank you very much, Mr. Chairman. I can understand the travails that the members of this committee are going through with the bankruptcy bill, and that members have been necessarily detained on the floor.

I am just pleased and honored to have the opportunity to appear before you and present to you Mr. Ricardo Hinojosa, who has been nominated by the President to be U.S. district court judge for the Southern District of Texas.

Mr. Hinojosa is a native of the Rio Grande Valley, where he is very well known and very well respected. His educational background and scholastic achievements are outstanding. He was the valedictorian of his high school class. He then attended the University of Texas at Austin, at which he graduated with honors and where he was selected as a member of phi beta kappa. He later attended Harvard Law School and served as editor of the Harvard Law Record. I might note that his Harvard background has not impinged adversely on his fine reputation in my State.

In addition to his impressive educational record, Ricardo Hinojosa has distinguished himself admirably during his present association as a partner with the law firm of Ewers and Toothaker. His integrity and expertise as an attorney and devotion to his profession and his community are recognized and respected by his peers and colleagues. He manifests all the qualities necessary as a member of the Federal bench and he is possessed of the sort of judicial temperament that would greatly enhance our Federal judicial system. I think, in the final analysis, judicial temperament is probably the most important equipment that a good lawyer could bring to the bench.

I believe that Mr. Hinojosa, if confirmed by the Senate, will bring these same outstanding qualities to the Federal bench. He has the personal integrity and compassion for his fellow human beings, as well as the educational and professional background that uniquely qualify him in this instance, and I am confident of his ability to assume this important position. Mr. Chairman, this nomination signifies the commitment of this administration to appoint the most qualified members of the legal profession to our Federal judiciary. I believe that Ricardo Hinojosa can and will fulfill the enormous responsibilities of providing a fair and impartial system of justice—a right guaranteed by our Constitution to all of our citizens. Therefore, I am pleased to recommend, without reservation or qualification, that you expeditiously approve the nomination of Ricardo Hinojosa to this very important position.

Thank you very much, Mr. Chairman.

Senator SIMPSON. Thank you very much, John, and I appreciate your being here, and more appreciate your understanding of the chairman's problem and the problem with that bill on the floor.

You, Mr. Hinojosa, certainly have been well recommended by a person who is greatly respected in this body, and it is good to have you here. We will get to some comments and some further process in the nomination, but at this time I know Senator Percy has a busy schedule and I certainly will hear from him with regard to the other nominee today, Joel Flaum.

Senator Tower, you know that whatever your schedule is, you can exit at any time.

Senator Bentsen does also submit a statement on behalf of the nominee, and that will be presented in the record.

[The prepared statement of Senator Bentsen dollows:]

PREPARED STATEMENT OF SENATOR LLOYD BENTSEN

I want to recommend that the Judiciary Committee move expeditously to approve the nomination of Ricardo H. Hinojosa to be United States District Judge for the Southern District of Texas. He is eminently qualified for the position, and I am certain that he will serve with distinction.

A Texas native, Mr. Hinojosa was educated at the University of Texas at Austin, where he received his B.A., and at the Harvard Law School. Following graduation from Harvard, he served as law clerk to Justice Thomas M. Reavley. His experience there no doubt prepared him well for the job for which I hope he will be confirmed. Today, Mr. Hinojosa is a partner of the McAllen, Tex., law firm of Ewers and Toothaker. In closing, I want both to congratulate Mr. Hinojosa and call on my colleagues to confirm his nomination. Thank you very much.

Senator TOWER. I think, also, that Representative de la Garza wanted to appear, but he is managing the Ag bill over in the House. I would ask that he be permitted to submit a statement for the record.

Senator SIMPSON. Without objection, so ordered.

[The prepared statement of Representative de la Garza follows:]

PREPARED STATEMENT OF E (KIKA) DE LA GARZA

Mr. Chairman, this is to confirm my total endorsement of Ricardo Hinojosa for the positions of Federal district judge of the Southern District of Texas.

Mr. Hinojosa is admirably fitted to fulfill the responsibilities of this significant position. He has been thoroughly trained in the study of law. He has served with distinction with one of the finest law firms in south Texas.

As a native son of the area, Mr. Hinojosa is acquainted fully with all the problems that confront judgeships in a border area of the United States.

South Texas is honored over your acknowledgment of the superiority of this young man.

While he will be the youngest person to take the Federal judgeship in the history of the state of Texas, he will be remembered, I predict, for the sagacity and diligence he exercises in the pursuit of his official duties.

Senator TOWER. And I apologize to my friend for detaining him.

STATEMENT OF HON. CHARLES H. PERCY, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator PERCY. Not one bit. I thank you, Senator Tower. We just came in ourselves from introducing the Vice President, who is substituting for Secretary Shultz, and that is quite a substitution, at the 50th anniversary of Save the Children.

Mr. Chairman, I am very honored and proud and pleased to be here today with you and with the nominee of the President, Joel Flaum, nominated by President Reagan to the U.S. Court of Appeals for the Seventh Circuit. I cannot really recall, in all the years that I have been presenting candidates and nominees of the President, when I was more proud than today, because I think that everyone in the legal community in Illinois and all of the sitting Federal judges feel that this nomination is absolutely outstanding.

I originally recommended Judge Flaum to President Ford in 1974 for a seat on the U.S. District Court for the Northern District of Illinois. He was subsequently nominated by President Ford and confirmed that year. Since that time, Judge Flaum has served with unusual distinction, receiving the praise of his colleagues on the bench and the legal community at large. In 1981, I submitted Judge Flaum's name to several Illinois bar associations for their evaluation of his fitness to serve on the Seventh Circuit Court of Appeals.

All three major Chicago bar associations gave Judge Flaum their highest rating. When the Justice Department subsequently submitted his name to the American Bar Association, its judicial review committee, by a significant plurality, gave Judge Flaum a rating of "exceptionally well qualified." This high a rating is rarely awarded by the ABA review committee. I am very proud, but not at all surprised, that Judge Flaum is one of its few recipients.

It is clear that Judge Flaum has already had a distinguished career in the law at his relatively young age, and I ask that his biography be included in the hearing record.

I am pleased to point out that from March 1972 to January 1975, Judge Flaum served as first assistant U.S. attorney for the Northern District of Illinois to the United States attorney, who was then Jim Thompson, now Governor of the State of Illinois.

I am indeed indebted to Governor Thompson for originally, years ago, pointing out to me the qualities and characteristics of Joel Flaum, who became one of the youngest district court judges, and who now still at a young age has served with 8 years of distinction on the district court and is now nominated by the President to the circuit court of appeals.

I thank you, Mr. Chairman, very much indeed.

Senator SIMPSON. Thank you, Chuck.

You, too, are very, I am sure, honored to have Senator Percy, just as Mr. Hinojosa has Senator Tower—two very extraordinary people who are senior Members of this body that those of us with more junior status, and even if we were not of junior status, look upon with great admiration and respect.

Now, Mr. Hinojosa, I believe you have certain family members; you might want to introduce them at this time. That would be appropriate.

Mr. HINOJOSA. Yes, sir, I do. I have got my mother, Mrs. Hinojosa, here today, and my two sisters, Thalia Munoz and Olga Hinojosa, and my brother, Miguel. I appreciate the opportunity to introduce him.

Senator SIMPSON. I understand, too, that you lost a brother in the service in Vietnam. I am sure that this is a proud occasion for all of you.

Mr. HINOJOSA. My father passed away 10 years ago, also.

Senator SIMPSON. Well, we welcome you here, and this is a great honor.

I would ask you now if you would stand and be sworn on the testimony you would give, please; Mr. Flaum, too. I have adopted Mr. Flaum for the day—he has no family—and I did that earlier in the proceeding.

If you will raise your right hands, do you swear that the testimony you will give in this hearing will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. HINOJOSA. I do.

Judge FLAUM. I do.

Senator SIMPSON. Thank you.

Mr. Hinojosa, would you please describe briefly the arrangements you have made to dissolve your financial interest in your law firm, especially what time record is involved, and what arrangements have you made to be compensated for your work on pending legislation?

TESTIMONY OF RICARDO H. HINOJOSA, NOMINEE, U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF TEXAS

Mr. HINOJOSA. Yes, Senator It is my arrangement presently with my law partnership that I will withdraw completely from the partnership if confirmed by the Senate, and I will pay them any amount that I owe them for my partnership interest and they will pay me any equity that I may have in said interest. I would have no other arrangement with them as far as payment on any pending litigation, sir.

Senator SIMPSON. Do you feel that in your perhaps relative lack of criminal trial experience—would that in any way hinder you in the performance of your duties as a Federal judge?

Mr. HINOJOSA. No, sir, I do not. In fact, in filling out one of the many questionnaires that I have had to fill out concerning my nomination, I really have looked back at all my time records and have found that I have quite a bit of litigation experience. As far as criminal experience, I have been involved in seven court appointments in Federal court, and I have also done some prosecutorial work involving the city of Hidalgo, which we represent. And I have had basically a varied practice.

Senator SIMPSON. There has been obviously a steady increase over the past two decades in the workload of the Federal courts, and all concerned parties who follow the issue seem to agree that the trend is likely to continue.

Do you have any recommendations that you might give us that might tend to stabilize or decrease this workload?

Mr. HINOJOSA. Senator, I know that that is certainly an ongoing discussion among a lot of bodies. Perhaps some of the recommendations would be with regard to Congress looking at the amounts concerning diversity jurisdiction.

Also, the amounts of writs of habeas corpus that are filed by prisoners are constantly increasing.

I think, from the Federal judiciary standpoint, the judiciary should perhaps look at strengthening the rules so that people who file lawsuits would carry on with them and would only be filing the type of lawsuits that should be in Federal court to begin with.

Senator SIMPSON. How would you resolve a conflict between your own conscience or your own sense of justice and the clear meaning of a statutory or constitutional provision?

Mr. HINOJOSA. Senator, I feel that is an easy question because I think that when you become a Federal judge, you take an oath to uphold the statutes and the Constitution. And, to me, that means that you have divorced yourself of any personal beliefs and opinions that you might have, and rule strictly on the Constitution and the statutes.

Senator SIMPSON. I think that is a very appropriate answer or response. To conclude, I would ask you, as you look forward to this important job in society, what do you look toward as perhaps the most rewarding aspect that you see in serving as a Federal district judge?

Mr. HINOJOSA. Senator, I feel that the most rewarding aspect would certainly be my service in south Texas, which is the area that I come from and the area that I went back to after law school.

It is an area that has been very good to me, and it is an opportunity for me to be of some service to my family and my friends and the rest of the citizens of south Texas, sir.

Senator SIMPSON. Thank you very much. I think you are going to be a very fine addition to the Federal judiciary.

Mr. HINOJOSA. Thank you, Senator, and I appreciate your taking the time to be here with us.

Senator SIMPSON. Indeed.

Judge Flaum, do you have any family? I was speaking with levity there, but you and I did visit before.

TESTIMONY OF JOEL M. FLAUM, NOMINEE, CIRCUIT JUDGE, U.S. COURT OF APPEALS FOR SEVENTH CIRCUIT

Judge **FLAUM**. I have a family; they are just not in attendance in the District today, Senator.

Senator **SIMPSON**. Well, you certainly have a fine record that Senator Percy described. You have served as a Federal district judge for the Northern District of Illinois since 1975.

Do you foresee any difficulty in the transition from the district court to the circuit court?

Judge **FLAUM**. Senator, I do not. I started my public service career as an appellate lawyer in the State system and have had occasion while a district judge to serve by designation on the Seventh Circuit. I have enjoyed that service, and to the extent that I have been able to participate in my role as a district judge in certain executive committee functions with our court, I have had an opportunity, I believe, to work in a collegial atmosphere and I am satisfied that I can leave the unique setting of the district judge and meaningfully participate with at least two other brothers and perhaps a sister someday. Our circuit presently does not have a lady jurist on the Seventh Circuit.

Senator **SIMPSON**. I see. Judge Flaum, the most recent annual report of the Director of the Administrative Office of the U.S. Courts indicates that the workload of the 12 U.S. courts of appeals continues to rise. Approximately 28,000 new appeals were filed in 1982. This represents a 6-percent increase over the previous record level of 1981 and a 68-percent increase above the number of appeals filed in 1975. Also, 1982 was the first year that filings exceeded the level of 600 per panel.

Do you have any recommendations to us as to how that number of cases on appeal might be reduced?

Judge **FLAUM**. Well, Senator, I am reluctant to announce at this point any specific recommendations because the dialog is really just beginning on how to address that problem.

A recent issue of the National Law Journal speaks of the potential crisis that exists in this area. I would just urge, at least at the national legislative level, some consideration be given to the judicial impact of any particular legislation that is passed.

I think many times there is a lag time between the creation of additional judgeships and the effect that immediately sets in when Congress, in its wisdom, chooses to either create or expand causes of action.

So, my main recommendation would be that if the judicial manpower has to be expanded, it ought to be able to follow more closely the actions of Congress. That is why I recommend almost a constant judicial impact review whenever Congress places its hand on new and or expanding legislation.

Senator **SIMPSON**. Judge, in your response to a portion of the committee's questionnaire concerning judicial activism you stated:

> One must recognize that whenever constitutional adjudication is required, the result must, of necessity, adopt, modify or nullify the will of a democratically elected body. When such awesome power is exercised in a republic such as ours, it should be done only in the most compelling of circumstances and with as much caution as able jurists can muster.

Where, in your view, then, does a conscientious judge draw the line between judicial decisionmaking and legislative decisionmaking, and what are the criteria you would consider in resolving whether or not a decision was the type that should be made by a judge as opposed to an elected legislative body?

Judge **FLAUM**. Well, Senator, I think a Federal jurist has to start with the premise that he represents perhaps the—I hate to say least democratic branch of government, but certainly the most indirectly selected branch of government.

We are the hardest to recall and we are set in place sometimes longer than members of the executive and legislative branches are. So, I would say that you must start out with a recognition that the public will is initially exercised by the hand of the legislature.

I think one must strain, as the law requires, to respect in every possible fashion, in a constitutional sense, the action of the legislative body. Indeed, the laws dictate that and I am in total agreement with that.

So, I would say that we should not rush to judgment and be most careful whenever exercising what I consider awesome power. I firmly believe in what I stated in my written response and have tried to live that life as a jurist in the nearly 8½ years I have been on the district bench.

Senator **SIMPSON**. I thank you very much. I have one final question. What are the standards that you, in your capacity as a district court judge, used in deciding that your court had a continuing administrative responsibility to oversee the implementation of one of its orders?

Judge **FLAUM**. Well, you know, there was a time when you could count on U.S. marshals to do that, Senator. Now Federal courts are sometimes in areas which require expertise beyond the able services of a marshal at both serving process and standing guard.

I have tried, whenever confronted with a situation where, in effect, a receivership was in place or a trusteeship is in place or has been imposed by court sanction, to try to use those officials currently in office in those respective institutions as the monitors of their conduct.

It is regrettable sometimes that the courts get into areas such as that, but when it is done, I think it is best done in a very limited fashion.

Senator **SIMPSON**. I thank you very much. Both of you have fine background data and fine reputations; you make a fine presentation. You are going to, I think, serve with distinction on the bench after your confirmation. I certainly think that will be assured.

It is good to have your members of the family here to share this important day, and you, too, Judge; it is nice to have you. It is especially nice to have Senator Tower. And, Senator Percy, I appreciate your remaining through the proceedings, and Senator Tower, also. I think that is most impressive with the schedule that these two have.

So, with that, I believe the hearing can be concluded. It will recess subject to the call of the Chair. Thank you so much.

Judge **FLAUM**. Thank you, Senator.

[Whereupon, at 3:17 p.m., the committee was adjourned.]

BIOGRAPHIES

JOEL M. FLAUM

NOMINEE, CIRCUIT JUDGE, U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Birth: November 26, 1936, Hudson, N.Y.

Legal residence: Illinois.

Marital status: Married to Thea Kharasch Flaum, two children.

Education: 1954-58—Union College, B.A. degree; 1958-59—Albany Law School; 1961-63—Northwestern University School of Law, J. D. degree; 1963-64—Northwestern University School of Law, LL.M. degree.

Bar: 1963—Illinois.

Military service: 1981 to present—U.S. Naval Reserve.

Experience: 1964-65—Associate, Schimberg, Greenberger, Krauss & Jacobs; 1965-69—Assistant State's Attorney, Cook County, Ill.; 1967-69—Lecturer, Criminal Law and Appellate Advocacy, Northwestern University School of Law; 1967-68—Associate Director, Police Legal Advisor Program; 1969-72—Assistant Attorney General, State of Illinois; 1972-75—First Assistant U.S. Attorney, Northern District of Illinois; 1975 to present—U.S. District Court Judge, Northern District of Illinois.

RICARDO H. HINOJOSA

NOMINEE, U.S. DISTRICT JUDGE, SOUTHERN DISTRICT OF TEXAS

Birth: January 4, 1950, Rio Grande City, Tex.

Legal residence: Texas.

Marital status: Single.

Education: 1968-1972—University of Texas at Austin, B.A. degree; 1972-1975—Harvard Law School, J.D. degree.

Bar: 1975—Texas.

Experience: 1975-1976—Texas Supreme Court, Law Clerk to Justice Thomas M. Reavley; 1976 to present—Ewers & Toothaker (associate, 1976-1979; spec partner, 1979-1982; partner, 1982 to present).

CONFIRMATION HEARING ON MOODY R. TIDWELL III

WEDNESDAY, MAY 4, 1983

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 2:21 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Staff present: Duke Short, chief investigator; Bill Christensen and Allan Spence, investigators; and Mary Lynn Batson, investigative clerk.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The **CHAIRMAN**. The committee will come to order. The purpose of the meeting today is to hold a hearing for a nominee to the U.S. Claims Court. Mr. Moody R. Tidwell III, of Virginia, has been nominated by the President to be a judge of the U.S. Claims Court.

Mr. Tidwell, you might stand up and be sworn. Do you swear the testimony you shall give in this hearing to be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **TIDWELL**. I do.

The **CHAIRMAN**. Have a seat.

We are very pleased to have both Virginia Senators here today. There is no State in the Union that has two finer or more able Senators than your two from Virginia; we hold them both in high esteem.

Your senior Senator serves with me on Armed Services and he is well equipped and one of the most knowledgeable men on defense matters in this Nation. He is on other committees, too, but it has been a pleasure for me to serve with him there.

Senator Warner, we would be glad to hear from you at this time.

Senator **WARNER**. Mr. Chairman, I appreciate your graciousness.

Mr. Tidwell, you are to be honored by having the chairman of the Judiciary Committee conduct your hearing. We have also with us, Mr. Chairman, Mrs. Tidwell, if I might ask that she stand and be recognized.

The **CHAIRMAN**. Mrs. Tidwell, we are very pleased to have you with us.

Mrs. **TIDWELL**. Thank you.

The **CHAIRMAN**. Is there anybody else you want to introduce, Senator?

Mr. TIDWELL. No other family members, sir. I would like to introduce the young lady who, if I am confirmed, will be my secretary, Mary Welday.

The CHAIRMAN. How are you?

Ms. WELDAY. Fine, Senator.

The CHAIRMAN. We are glad to have you.

Mr. TIDWELL. And Mr. Brent Israelson, who is with me right now with the Department of the Interior.

The CHAIRMAN. We are glad to have you with us.

STATEMENT OF HON. JOHN W. WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Mr. Chairman, it is a pleasure to be joined by Senator Trible, both of us unanimously, of course, supporting this nomination.

Mr. Tidwell is married and has two children. He is a graduate of Ohio Wesleyan University and received his law degree from American University in 1965. He is extremely well qualified for this position because of his unique experience and Federal service as an attorney.

His first legal job was with our own U.S. Accounting Office where, as a lawyer in that office, he adjudicated all manner of claims involving Government contracts. He remained in that position from 1965 until 1969.

During his last 2 years at GAO, virtually every one of the decisions that he prepared was formally published by the Comptroller General—a sign that he was assigned many of the complex cases, often involving novel questions of law and fact.

Mr. Tidwell left the GAO in 1969 to become a staff attorney in the Office of the Solicitor at the Department of the Interior. In 2 years, he had been appointed Assistant Solicitor for Procurement—the youngest lawyer ever given a management position in the office at that time.

Mr. Tidwell was instrumental in developing a contracting and grant program in one of the largest construction programs in Government. Shortly thereafter, he was made Associate Solicitor for General Law, where he gained much knowledge and expertise in matters such as personnel law, patents and intellectual data, labor-management relations, and the budgetary process, all of which are areas that will be addressed by him as a judge in the U.S. Claims Court.

I defer now, Mr. Chairman, to my other colleague who will provide additional information.

STATEMENT OF HON. PAUL S. TRIBLE, JR., A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator TRIBLE. Mr. Chairman, I am pleased to join John Warner here today and present to you our constituent, Moody Tidwell, who has been nominated by the President to be a judge on the U.S. Claims Court.

I strongly recommend his confirmation to this committee. He will bring to that court an outstanding record of professional practice and public service. In fact, it can be said that his entire career has been spent preparing for this judicial post.

Mr. Tidwell's education and his long public career both in the legislative and executive branches of our Government have given him expertise in almost all the areas that the Claims Court will address.

Mr. Tidwell is an acknowledged expert in natural resources law, Government procurement and personnel law. He also has an extensive background in patent law, labor-management relations, public land law, and, very importantly, a background and sensitivity to the role of the United States and its trust relationship with our native American citizens.

I am sure that the Claims Court will benefit from his presence and that Mr. Tidwell's service on that court will continue to bear the hallmark of excellence that his prior public service has always borne.

Therefore, it is a great pleasure that I present him here today to you and to this committee and urge favorable action of this committee and the Senate on his nomination.

Moreover, Mr. Chairman, our distinguished colleague in the Congress, Mr. Frank Wolf, who represents the 10th Congressional District of Virginia, had planned to be here today. Indeed, he was here, but was called back to the House of Representatives for a vote.

Congressman Wolf's testimony is in my hand and I would ask that it be made a part of the record.

The CHAIRMAN. Without objection, that will be done.

Senator Trible, we are very pleased to have you here to endorse Mr. Tidwell.

Mr. Tidwell, with the endorsement of these two able Senators and Congressman Wolf, too, I do not see how you can fail to get confirmation. I want to assure you that we will give it prompt attention and we hope to have you approved at the next meeting.

Senator WARNER. Thank you, Mr. Chairman.

The CHAIRMAN. I want to thank you distinguished Senators for being here, and you are excused.

Senator TRIBLE. Thank you, sir.

[The prepared statements of Senator Warner and Representative Wolf follow:]

PREPARED STATEMENT OF SENATOR JOHN W. WARNER

Mr. Chairman, I am pleased to appear before the committee this afternoon to introduce Moody Tidwell who has been nominated by the President to a judge on the U.S. Claims Court.

Mr. Tidwell is married and has two children. He is a graduate of Ohio Wesleyan University and received his law degree from American University in 1965.

Mr. Tidwell is extremely well qualified for this position because of his unique experience in Federal service as an attorney.

His first legal job was our own U.S. General Accounting Office where, as a lawyer in the General Counsel's Office, he adjudicated all manner of claims involving government contracts. He remained in that position from 1965 until 1969. During his last few years with the GAO, virtually everyone of the decisions that he prepared was formally published by the Comptroller General—a sign that he was assigned many of the complex cases, often involving novel questions of law and fact.

Mr. Tidwell left GAO in 1969 to become a staff attorney in the Office of the Solicitor at the Department of the Interior. Within two years he had been appointed Assistant Solicitor for Procurement—the youngest lawyer ever given a management position in the Office at the time. Mr. Tidwell was instrumental in developing a contracting and grant program in one of the largest construction programs in government. Shortly thereafter he was made Associate Solicitor for General Law where he gained much knowledge and expertise in matters such as personnel law, patents and intellectual data, labor management relations and the budgetary process—all of which are areas that will be addressed by him as a judge in the U.S. Claims Court.

During this same time period, Mr. Tidwell acquired a Master of Laws Degree from George Washington University with a major in government procurement. He also held down two essentially fulltime jobs. One at the Interior Department and the other as Vice Chairman and Staff Director of the Legal Remedies Study of the Congressional Commission on Government Procurement.

Mr. Tidwell's subsequent jobs have also prepared him to be a judge in the Claims Court. He was Associate Solicitor for Energy and Resources at the Interior Department where he handled all matters of land and mineral claims. He was Associate Solicitor for Mine Safety and Health in the Labor Department where, as chief lawyer for a regulatory program, he honed and developed his litigation skills. As Deputy Solicitor of Interior he is responsible for bringing balance to the various, often conflicting, programs of the Department of the Interior.

This experience should enable Mr. Tidwell to carry out the duties of this new position with distinction.

Mr. Chairman, it is a pleasure to recommend Moody Tidwell to the Committee, and I urge his confirmation.

PREPARED STATEMENT OF REPRESENTATIVE FRANK R. WOLF

Mr. Chairman, I have known Moody Tidwell for almost 10 years, from the days when we served together in the Department of the Interior under Secretary Rogers C. B. Morton. In my opinion there is no other person more qualified to be a judge on the U.S. Claims Court than is Mr. Tidwell.

Moody has been preparing for this judgeship his entire career. He has a master of laws degree in government contracting, he lectures on government procurement, and he was the key player in developing Interior's present procurement operation. He is an expert in government personnel law, land law and Indian law. He also knows patent law; in fact, during the mid-1970's he served on the Committee on Government Patent Policy of the Federal Council on Science and Technology and was a member of the U.S. Working Group on Intellectual Policy, to implement the U.S./U.S.S.R. Science and Technology Agreements.

In addition to his intellectual abilities, I know Moody to be an industrious, practical lawyer. All of my dealings with him have mirrored his reputation; that of a person keenly interested in applying the law fairly and objectively.

I know that Mr. Tidwell will be a great attribute to the Claims Court. I am proud to count him as a friend and I strongly recommend his confirmation both by this Committee and the Senate as a whole.

The CHAIRMAN. I have a few questions I would like to ask of Mr. Tidwell.

Mr. Tidwell, the Federal Courts Improvement Act of 1982 gives the new Claims Court injunctive powers in Government contract preaward disputes. Do you foresee any problems in the exercise of this new jurisdiction?

TESTIMONY OF MOODY R. TIDWELL III, NOMINEE, JUDGE, U.S. CLAIMS COURT

Mr. TIDWELL. No, sir, I do not. The Claims Court is lucky enough to be located in the District of Columbia, where the court of appeals and the district court have developed quite a body of law on that subject. The Claims Court can draw from that precedent and fashion it as it sees fit to meet the requirements of the Federal Courts Improvement Act of 1982.

I do not think it will be any kind of a problem at all. The only question that might arise would be the relationship of the Claims

Court to the U.S. district courts, but that issue, of course, will be addressed by the district courts, not by the Claims Court judges.

The **Chairman**. Mr. Tidwell, the Federal Courts Improvement Act requires a rotation system for random assignment of cases in the Court of Appeals for the Federal Circuit in order to avoid specialization within that court. Do you think that a similar system should have been mandated by the Congress for the U.S. Claims Court?

Mr. **Tidwell**. I think the system that is in place right now is very good. I understand that the chief judge has an informal rotational system which he now exercises across the board. He does have the option when he needs to, because of time constraints or some particular extraneous problem, to take a case from one judge and give it to another judge, but I understand that he does that in a collegial atmosphere, with all of the judges agreeing to do it. So, no, sir, I do not think that that needs to be addressed specifically in the law.

The **Chairman**. Mr. Tidwell, do you see any major problems or benefits with the nationwide jurisdiction of the Claims Court?

Mr. **Tidwell**. Absolutely not. I think it is a wonderful system. Anytime a court has a nationwide jurisdiction but sits in one place, I think it behooves the court to go to the citizens in order to let them redress their grievances.

The **Chairman**. Do you see any benefits in it?

Mr. **Tidwell**. Those are the benefits that I see.

The **Chairman**. With the nationwide jurisdiction?

Mr. **Tidwell**. Benefits to nationwide jurisdiction? Yes, sir. I think the kind of issues and cases that the court handles need to be handled by that kind of a court. They are better handled in the Claims Court than in the U.S. district courts.

The **Chairman**. Some have felt it would save the public money. Would you agree with that?

Mr. **Tidwell**. Yes, sir.

The **Chairman**. Mr. Tidwell, if confirmed, what standards of conduct and ethics will guide you during your tenure as a judge of the Claims Court?

Mr. **Tidwell**. The very highest, Senator. I was lucky enough to attend a lecture last Monday by Chief Judge Markey of the Court of Claims for the Federal Circuit, who spoke on that subject. I agreed with everything he said.

The **Chairman**. Now, without objection, I am going to place in the record a short biography of you that gives your qualifications for this position.

We will leave the record open until the close of business on Friday, so if there is any need for any additional hearing, we will have an opportunity to arrange that, too. Some Senators may have some questions that they want to propound to you, or may send some to the committee that they wish us to propound to you, and you can answer those for the record unless we see the need to call you back, which I do not much think will happen.

I wish you success in your service on the Claims Court. This is a very important court and I am sure you will do a fine job there and I wish you good luck.

Mr. **Tidwell**. Thank you very much, Senator.

The CHAIRMAN. We stand adjourned.

[Whereupon, at 2:31 p.m., the committee was adjourned.]

BIOGRAPHY

MOODY R. TIDWELL III

NOMINEE, JUDGE, U.S. CLAIMS COURT

Birth: February 15, 1939, Kansas City, Mo.

Legal residence: Virginia.

Marital status: Married to Serena Cox Tidwell, two children.

Education: 1957-61—Ohio Wesleyan University, B.A. degree; 1962-65—American University College of Law, J.D. degree; 1971-74 (evenings)—George Washington University National Law Center, LL.M. degree.

Bar: 1966—District of Columbia.

Military service: 1962-66 (6 months active duty)—U.S. Coast Guard.

Experience: 1965-69—U.S. Government Accounting Office, Office of the General Counsel; 1969 to present—U.S. Department of Interior (1969-71—Staff attorney, 1971-74—Assistant Solicitor for Procurement, 1974-76—Associate Solicitor for General Law, 1976-77—Associate Solicitor for Energy and Resources, 1977-78—Deputy Associate Solicitor for Mine Safety and Health); 1980—Associate Solicitor for Mine Safety and Health, U.S. Department of Labor; 1980 to present—Deputy Solicitor, U.S. Department of Interior.

CONFIRMATION HEARING ON:

JULIA SMITH GIBBONS, H. TED MILBURN, AND BOBBY RAY BALDOCK

WEDNESDAY, MAY 18, 1983

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met at 2 p.m., in room 226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Staff present: Duke Short, chief investigator; Bill Christensen and Allan Spence, investigators; and Mary Lynn Batson, investigative clerk.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

We have met today to hold a hearing on three U.S. district judges, two from Tennessee and one from New Mexico.

We are very pleased to have these people with us. The first, I believe, are the two judges from Tennessee, Judge H. Ted Milburn, if you want to come around and have a seat. And Judge Julia Smith Gibbons, both of Tennessee.

Is Congresswoman Lloyd here?

Senator BAKER. Mr. Chairman, I understand that both Senator Sasser and Congresswoman Lloyd will be here.

The CHAIRMAN. When they come in, we can hear their statements later. I know how busy you are, so we can go ahead.

Senator Baker, we are pleased to have you with us and I presume you wish to speak in behalf of these judges whom you recommended.

STATEMENT OF HON. HOWARD H. BAKER, JR., A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator BAKER. Mr. Chairman, thank you very much. I do, indeed, wish to speak on behalf of both nominees. I recall so clearly the admonition of my late father-in-law, Senator Everett Dirksen, who once said that his principal legacy in the Senate would be the quality of the judicial nominees that he presented for confirmation to this body, this committee, of which he was a member, and to the Senate as a whole.

I have had an opportunity now, after almost 17 years of service in the Senate, to hear and appreciate and to more fully understand the importance of Senator Dirksen's words. Indeed, it is a serious matter that we engage ourselves in in the selection and recommendation of judicial appointments to the President of the United States and to this committee and the Senate for confirmation and approval. So I approached the matter of a search for judicial nominees with great care and deliberation. I have attempted to consult with not only my colleague in the Senate, who will be here shortly and who I believe will testify on their behalf, and our House delegation as well on both sides of the political aisle.

In addition, it has been my privilege to seek the advice and recommendation of professional associations, including the Tennessee Bar Association, on names to be considered, and on these two nominees in particular. Mr. Chairman, it is a distinct pleasure then for me to learn that the President had accepted our recommendation for these two nominees who are with us today. With your permission, I will give you a word of background about each of them, beginning first with Judge Gibbons.

She is a nominee to be U.S. district judge for the Western District of Tennessee, which is located in Memphis. She is presently a circuit court judge, of division 6, of the circuit court for Shelby County, Tenn., and resides in Memphis. Prior to her service as a judge of the circuit court, she was deputy counsel and legal adviser to our Governor Lamar Alexander. You, Mr. Chairman, will remember Governor Alexander as a former member of my staff, my principal legislative assistant prior to his election as Governor. Prior to her service for Governor Alexander, she was engaged in private practice. Judge Gibbons has clerked for the policy planning office in the Governor's office and for a circuit judge in Nashville, Davidson County, Tenn.

It is a pleasure, Mr. Chairman, to come to you and recommend to you without hesitation that this committee report favorably the nomination of Julia Smith Gibbons to be U.S. district judge for the Western District of Tennessee.

With your permission, Mr. Chairman, I would like to speak as well at this point of the other nominee, who sits on my right, an old friend, H. Ted Milburn, who is a nominee for the position of U.S. district judge for the Eastern District of Tennessee. Judge Milburn resides in Hamilton County, on Signal Mountain, adjacent to Chattanooga. He is currently a faculty member of Tennessee Judicial Academy and a circuit judge in the Sixth Judicial Circuit of Tennessee. Prior to that, he was a partner in a Chattanooga law firm.

Judge Milburn received his law degree from the University of Tennessee, College of Law.

Mr. Chairman, I can say that I have known both of these nominees for a long time, and I know them well and favorably. I vouch for their professional credentials; I vouch for their probity, their honesty, and their sincerity. And I believe, Mr. Chairman, they will be a credit not only to the Federal bench but also to this committee and to the Senate as and when they are confirmed for these lifetime positions.

Mr. Chairman, I am pleased to present them now, and if the committee will permit me to do so, I will return to the Senate floor where we are engaged in the final moments of deliberation on the immigration bill, and before we proceed to the next item of business which requires my attention.

The **Chairman**. Senator, we are honored to have you come before the committee and I would just tell these two nominees that they could not have a stronger, finer, more able Member of the Senate to come and represent them than you.

Senator **Baker**. Mr. Chairman, I am grateful.

The **Chairman**. He is the power in the Senate. We are very pleased to have you, Senator.

Senator **Baker**. Thank you.

The **Chairman**. Now, if you all will stand up and be sworn.

Do you swear the testimony you give in this hearing shall be the truth, the whole truth and nothing but the truth, so help you God.

Judge **Milburn**. I do.

Judge **Gibbons**. I do.

The **Chairman**. Be seated.

I notice Congresswoman Lloyd has arrived. We would be very pleased to have you speak on behalf of either or both of these nominees, if you care to do so.

STATEMENT OF HON. MARILYN LLOYD, A U.S. REPRESENTATIVE FROM THE STATE OF TENNESSEE

Mrs. **Lloyd**. Thank you very much, Mr. Chairman.

I am here to speak in favor of the nomination of Ted Milburn. He is an individual I think Chattanooga can rightly be proud of. It is only fitting that he should be appointed to a Federal judgeship there. As Senator Baker stated, his education and legal credentials are exemplary.

In 1973, he was appointed to the circuit court, and subsequently elected to an 8-year term. Just last year, Mr. Chairman, he was overwhelmingly endorsed and reelected without opposition for a second 8-year term. He has served on the professional ethics and grievance committee of the Tennessee Bar, as a special judge for the Tennessee Court of Appeals, and as presiding judge of the State trials judges in Hamilton County. Right now, he is secretary of the Tennessee Trial Judges Association. As I mentioned earlier, when he returned to Chattanooga, he returned to serve his community. He has been a very active church member and leader with several community groups.

Although Senator Baker and I do represent different political parties, I am very pleased that he chose to nominate Judge Milburn. He is a respected member of the Chattanooga-Hamilton County legal community, and his expertise is widely recognized. His nomination has certainly received bipartisan support, and I do hope that this body acts expeditiously on his confirmation.

I thank you for letting me speak on behalf of Judge Milburn.

The **Chairman**. We are very pleased to have you here, and I am sure your fine endorsement will carry great weight with the committee.

Mrs. **Lloyd**. Thank you very much, Mr. Chairman.

The **Chairman**. You may be excused, if you would like to at this time.

To save his time, we next will have Senator Domenici before we hear testimony. He is one of the busiest men in the Senate. The whole budget of the United States rests upon his shoulders, so he has a big responsibility.

Senator, have a seat.

Senator DOMENICI. Thank you, Mr. Chairman.

The CHAIRMAN. And if your nominee will come around with you.

Senator DOMENICI. Mr. Chairman, Senator Bingaman is also here today.

The CHAIRMAN. Senator Bingaman, have a seat.

Senator DOMENICI. And our Congressman from the first district, Manuel Lujan.

The CHAIRMAN. We are very pleased to have all of you gentlemen here.

Senator, you may proceed.

STATEMENT OF HON. PETE V. DOMENICI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator DOMENICI. Thank you very much, Mr. Chairman.

I, too, as Senator Baker, am very pleased to be here with our nominee, Bobby Ray Baldock, of Roswell, N. Mex.

Perhaps the people in that part of the State from whence he comes, Mr. Chairman, were a bit presumptuous. About a month ago, in honor of this event and his ultimate confirmation and taking the bench, the community held what they called a roast. About 400 people from his part of New Mexico came to that event and shared an evening.

I have been a longtime acquaintance of this man whom I consider to be a very superb candidate. But that night more than a month ago, as 15 or 20 people participated in reliving his life, and sharing his accomplishments, I, too, became somewhat presumptuous. I became more and more certain that you would act expeditiously and that New Mexico would have a new judge, he deserves this great honor and responsibility because he has had such a distinguished career as an attorney; he has excellent credentials; and in the legal community he is highly recommended.

In New Mexico we have a committee that evaluates all of the applicants and makes recommendations to the Senators. Bobby Ray Baldock made it through that round, and was selected among the five nominees. I think it is New Mexico's good fortune and the Federal judiciary's good fortune that the President thereafter chose to select him.

I hold the Federal bench in the highest esteem. I think you would look beyond a legal career and legal expertise in your expectation for a Federal judge. You would want to know about his demeanor, his character, and his activities. Let me say that everyone who knows him says his demeanor for this job is par excellence. His activities include, first of all, being a very, very strong family man. And that, obviously, leads to tremendous community activities, and he has not shirked on those while he has been extremely busy in his profession.

His activities on behalf of the community have been principally for young people—in the YMCA and athletic activities, which he participates in, and coaches. I think when you add all of that together, the State of New Mexico has sent you a superb human being with exemplary legal background. I am very hopeful that you will see fit to confirm him expeditiously. We need a new judge and are very proud of him.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. We are honored to have you before the committee. I guess there is not a busier man in the Senate today than Senator Domenici. He is one of the most influential members of the Senate and his high endorsement of you will certainly go a long ways with the committee. I just want to commend you having such a strong stalwart on your side.

Senator Bingaman, we are delighted to have you with us. Senator Bingaman is a new Senator. He has made a fine impression. We are pleased to have you.

STATEMENT OF HON. JEFF BINGAMAN, A U.S. SENATOR FROM THE STATE OF NEW MEXICO.

Senator BINGAMAN. Thank you, Mr. Chairman.

Let me just add my recommendation and support to Mr. Baldock. Obviously, the recommendation of our delegation from New Mexico in support of Mr. Baldock was made before I arrived, but I certainly compliment them on their choice in this case. I think they did a superb job. He is going to be following the tradition of excellence in our Federal bench in New Mexico. And I would also point out that the Roswell bar from which he comes is one of the strongest bars in New Mexico. We have a tradition of excellent attorneys there, and he is one of the best.

We are honored to have him to recommend to this committee today and I, too, would urge that the committee act quickly and favorably on his nomination.

Thank you.

The CHAIRMAN. Thank you very much, Senator. We are very pleased to have you. I believe this is your first appearance in behalf of a nominee.

Senator BINGAMAN. It is, yes.

The CHAIRMAN. We are very glad to see the Senators together on these matters.

Now, Mr. Congressman, we will be glad to hear from you.

STATEMENT OF HON. MANUEL LUJAN, JR., A U.S. REPRESENTATIVE FROM THE STATE OF NEW MEXICO.

Mr. LUJAN. Thank you very much, Mr. Chairman.

The two Senators are both lawyers and I am not. From the legal perspective they would have a better understanding of those capabilities, although I have always heard that he is one of the best lawyers that we have and that, of course, played a significant part in his being selected for this position. But I would also tell you that, as an individual, Mr. Baldock leads an exemplary life. He is a source of inspiration for young people and for others as well.

I cannot think of a person who deserves this honor more than Mr. Baldock, so I would ask that the committee promptly and expeditiously confirm his nomination so that we can have the benefit of his services.

Thank you.

The **Chairman**. Mr. Baldock, with such fine men behind you, I feel certain that you will have no trouble being confirmed.

We will now excuse the Senators and the Congressman, if they wish to go. I know how busy they are.

We will go back now and take the first nominees, if they will come up. We will take them one at a time with the lady first. We always put ladies first.

Senator **Domenici**. Mr. Chairman, thank you very much.

The **Chairman**. Thank you, Mr. Chairman. We are pleased to have you with us.

Now, without objection, Judge Gibbons, we will put your brief résumé in the record.

Would you like to introduce any members of your family or friends who are with you?

TESTIMONY OF JULIA SMITH GIBBONS, NOMINEE, U.S. DISTRICT JUDGE, WESTERN DISTRICT OF TENNESSEE

Judge **Gibbons**. Mr. Chairman, my husband, Bill Gibbons, who practices law in Memphis is here with me today. Also, my brother, John Abernathy Smith, and his family, his wife Helen and their children Julia and Jay are here from Pennsylvania.

The **Chairman**. We are very pleased to have all of you people here today for this confirmation hearing.

Judge, how old are you?

Judge **Gibbons**. I am 32.

The **Chairman**. It is a bad question to ask a lady, but you look so young.

Judge **Gibbons**. I am 32, sir.

The **Chairman**. Thirty-two. I guess you will probably be the youngest Federal district judge in the United States.

Judge **Gibbons**. Probably so. I have heard that.

The **Chairman**. And I am sure one of the most attractive.

Judge **Gibbons**. I do not know about that.

The **Chairman**. Judge Gibbons, I believe you have served as a circuit judge for the Fifteenth Judicial Circuit of the State of Tennessee for approximately 2 years.

Now, would you tell us just what jurisdiction this court has?

Judge **Gibbons**. Well, Circuit Court in Tennessee, and Memphis in particular, is a civil court with general jurisdiction. We hear all types of civil cases, basically.

The **Chairman**. That is the highest court for civil cases in the State of Tennessee?

Judge **Gibbons**. It is the trial court that handles——

The **Chairman**. The highest trial court?

Judge **Gibbons**. Right.

The **Chairman**. Now, do you handle criminal cases?

Judge **Gibbons**. No, sir, other than we get appeals from juvenile court and city court which are quasi-civil and quasi-criminal, but, mostly, it is civil cases.

The CHAIRMAN. Who tries, for instance, felonies, murders and so forth?

Judge GIBBONS. In the urban areas in Tennessee, we have special criminal courts that try those types of cases. In some areas of Tennessee, circuit judges try them, but I do not.

The CHAIRMAN. Is that fixed by law or custom?

Judge GIBBONS. No, sir, it is fixed by law.

The CHAIRMAN. Judge Gibbons, you have tried both jury and nonjury cases, I presume?

Judge GIBBONS. Yes, sir.

The CHAIRMAN. And I am confident you are knowledgeable of the State laws. Do you foresee any difficulty in the transition from the State court to the Federal District Court?

Judge GIBBONS. I know that I will be encountering a number of new areas of the law, and I am prepared to work just as hard as I need to work to master those new areas, and plan also to be very careful in my decisionmaking as I encounter those new areas. And I hope that with that effort on my part there will not be a difficulty in the transition.

The CHAIRMAN. Judge Gibbons, do you feel that a judge should assume direct control over complex issues in cases in order to avoid delays and to effectively manage such cases?

Judge GIBBONS. I think that a judge has to be in control of his or her docket. And I think that a judge has to make sure that a case gets to trial, and that when it gets to trial, it is tried in a reasonably efficient manner. So, yes, I think a judge ought to do that. At the same time, I think a judge has to be careful not to get too involved in a case and to always maintain the proper role of neutrality.

The CHAIRMAN. Judge, what kind of guidelines should a judge follow in determining propriety of Federal intervention into State affairs, and are you concerned about strong advocates of public issues being appointed to the Federal bench?

Judge GIBBONS. With regard to the first part of that question, I think that judges ought to be mindful that there are proper areas of State control, and that Federal judges ought to interfere in those areas with reluctance.

With regard to the second part of the question, I think that often people who have been strong advocates of particular positions have difficulty in making the transition to the neutral role that a judge ought to assume. I do not think that I fall within that category.

The CHAIRMAN. Judge, how would you resolve a conflict between your own conscience, or your own sense of justice, and the clear meaning of a statutory or constitutional provision?

Judge GIBBONS. The oath that I will take says that I will uphold the Constitution and the laws. I will do that and any personal opinion that I might have would have to be put aside in order for me to do that.

The CHAIRMAN. Judge, in response to the portion of the Committee's questionnaire relative to judicial activism, you stated, in part:

> Trial judges, of course, have an obligation to follow the law, as defined by the appellate courts, whether or not certain decisions may be characterized by some as reflective of judicial activism.

Judge, what is the proper application of stare decisis in constitutional law; specifically, what is the duty of a Federal judge when confronted with a case in which one of the precedents of his court clearly conflicts with the Constitution as that judge interprets it?

Judge GIBBONS. Well, the overriding guideline for a judge always has to be the plain language of the Constitution. And there may be instances in which, for example, the Supreme Court has interpreted a particular constitutional provision in one way and then the trial judge, if the issue is the same, then the trial judge ought to follow that. But the overriding principle for the judge has always got to be the plain language of the Constitution.

The CHAIRMAN. In other words, if a judge decided some case in an appellate court that you felt was not in accord with the Constitution, you would not hesitate to follow the Constitution as you interpret it?

Judge GIBBONS. I have to follow the Constitution.

The CHAIRMAN. Now, some judges have taken over the running of school districts and other State institutions, and have gone very far in what we call judicial activism. We have three branches of government, Congress makes the law and the executive branch administers the law and the judicial branch interprets the law. Now, are you a strict believer in following the three branches of government, as defined in the Constitution?

Judge GIBBONS. I believe that I have a good understanding of what the role of each of the branches of government ought to be, and I think, as a Federal judge, I will keep in mind what my role is, which is the resolution of the grievances between the parties who come before me. And I will be very reluctant and act with great restraint in resisting invitations to get involved in performing functions that ought properly to belong to the other branches.

The CHAIRMAN. Do you believe that the judge's job is to interpret the law and not make the law?

Judge GIBBONS. Yes, sir, except in situations where there is no guidance from the legislature on it. There is a proper role for case law, but not when there is a particular statute or constitutional provision that controls the given situation.

The CHAIRMAN. All right. Thank you very much. We wish you a successful tenure on the bench. I think that covers my questions.

Judge GIBBONS. Thank you very much.

The CHAIRMAN. Has Senator Sasser come in?

Senator Sasser, we will take you now. We do not want to keep you waiting. Come around and have a seat.

We have two judges here from Tennessee, Senator Sasser, who have been appointed: Judge Milburn and Judge Julia Smith Gibbons, if you would care to speak in behalf of either or both of these, we would be pleased to hear from you.

STATEMENT OF HON. JIM SASSER, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator SASSER. Thank you, Mr. Chairman.

I wish to apologize to the chairman for being somewhat late today. I have the good fortune, or perhaps the misfortune, to serve on the Senate Budget Committee, and, as the chairman knows, we have been in deliberations all day about what to do with the budget.

I am pleased today to join my distinguished senior colleague, Senator Baker, in urging the confirmation of Judge Julia Gibbons and Judge Ted Milburn to the Federal bench in Tennessee.

Both of these nominees, Mr. Chairman, are individuals of unquestioned integrity. They have the qualifications and the experience, I think, to make splendid additions to the Federal judiciary.

Judge Gibbons, although her career has not been a lengthy one, at least her legal career has not been lengthy, has been characterized by a remarkable achievement. Her intelligence and her judicial temperament and her knowledge of the law have won her widespread acclaim within the bar and bench.

Judge Milburn has also had a long and distinguished career in the city of Chattanooga, both as a lawyer and as a circuit court judge. He has established a reputation for fairness and for having an astute legal mind. He is well respected among the bar in the State of Tennessee. And, as a former lawyer, Mr. Chairman, one who practiced law for 15 years, many times in the Federal courts, I am happy to recommend confirmation of both of these nominees to you, sir, and to your distinguished committee.

Thank you for allowing me to appear here today.

The Chairman. We are very pleased to have you, Senator, and I am sure the recommendation of an able Senator like Senator Sasser will carry great weight with this committee. We are honored to have you before the committee.

Senator Sasser. Thank you.

The Chairman. You are excused, if you wish to go.

TESTIMONY OF H. TED MILBURN, NOMINEE, U.S. DISTRICT JUDGE, EASTERN DISTRICT OF TENNESSEE

The Chairman. We will now partake of Judge Milburn's matter.

Without objection, the résumé of Judge Ted Milburn will be placed in the record.

Would you like to introduce your family who are with you, Judge?

Judge Milburn. Yes, Mr. Chairman.

The Chairman. And any friends.

Judge Milburn. I have my wife, Elaine Milburn; my son Douglas Blair Milburn. Or daughter Lisa, or Elizabeth Elaine, had to be in exams this week and could not be with us. But I am happy to introduce my son and wife.

The Chairman. We are very pleased to have you all with us.

Judge, I notice you are from Cleveland, Tenn.

Judge Milburn. I was born in Cleveland, Tenn.

The Chairman. You were born there. I have a Clemson classmate living there by the name of Johnny Dunlap. I wonder if you know him?

Judge Milburn. Yes, sir, I do.

The Chairman. Does he recommend you? [Laughter]

Judge Milburn. I am of that impression, Senator.

The Chairman. Will you tell him I said to write me a letter?

Judge Milburn. I think he already has.

The CHAIRMAN. I expect he has.

The investigator tells me he thinks we have already gotten a letter from him.

Judge, you have been on the circuit court of Tennessee, I believe, for approximately 10 years.

Judge MILBURN. Yes, sir.

The CHAIRMAN. And in reviewing your file, I note that prior to your reelection in 1982, the Chattanooga Bar Association conducted a poll in which you were endorsed for reelection by a vote of 320 to 7. This means you are a pretty good votegetter. Maybe some of us Senators need to talk to you to see how to get votes. This speaks well I think for your service on the Tennessee State Court.

Judge, do you foresee any difficulty in the transition from the State court to the Federal district court?

Judge MILBURN. Mr. Chairman, I know I have a lot to learn, but I have been working at that. Judge Gibbons and I attended the seminar for newly appointed, newly nominated judges, just week before last. And we have been studying and we do not anticipate any real problems as far as the transition is concerned.

The CHAIRMAN. Judge, it is my belief that judicial temperament is a very important requisite for a Federal judge. Would you give me your thoughts on that subject?

Judge MILBURN. Mr. Chairman, I would not have mentioned that poll, but you did mention it, and I would hope that that would indicate something of my temperament on the bench.

I will say this: I think that at all times a judge should be a gentleman. I do not think a judge should ever raise his voice in anger at lawyers, litigants, or jurors, or embarrass lawyers, litigants or jurors ever. And, if he has something to say to an attorney, that can be said in the chambers. I think court should be conducted so that it will generate respect for the system; make people believe in the judicial system of the country.

The CHAIRMAN. I am glad to hear you make that statement. I have seen some judges, some Federal judges, yell at attorneys, witnesses, jurors, or others around the court. I thought it was inexcusable. A judge has all the power, and I think the man with the most power ought to be the most humble. He ought to be courteous at all times.

Judge, would you tell the committee how you would handle an incidence in which counsel for one of the parties in your court was obviously not a skilled litigator, and was not prepared to adequately represent the interest of his or her client?

Judge MILBURN. Hopefully, Mr. Chairman, during the pretrial procedures, pretrial conferences, this would become apparent, and I think the role the judge should exercise at that time is perhaps call the counsel aside and suggest that he have associate counsel. At the same time, during the trial, the judge must not deviate from his role as a neutral participant in the trial, one who presides over it. He cannot help an inept attorney. So I think only to the extent of making suggestions about associate counsel, I believe that is about all a judge can do, or should do.

The CHAIRMAN. Judge, the phrase "judicial activism" is often used to describe the tendency of judges to make decisions on issues that are not properly within the scope of their authority.

What does the phrase "judicial activism" mean to you?

Judge **Milburn**. Mr. Chairman, to me it means a judge substituting his own preferences, feelings, opinions about a particular subject for that—or for that which Congress has enacted as being the law. As has been pointed out earlier, there are three separate coequal branches of Government, each with an assigned role, and the legislative role does not belong to the judiciary. It belongs to the legislative branch of Federal and State governments. I do not feel that a judge should intrude in an area that is not his responsibility. His responsibility is to follow the law, and not to try to make the law.

The **Chairman**. Judge, are there ever any circumstances where you would consider it appropriate to decide a case on some basis other than one when the intent of the framers of legislation or constitutional provisions can be detected, either through the text of a provision or its surrounding legislative history?

Judge **Milburn**. No, sir. The Constitution must be followed in all instances.

The **Chairman**. Is there anything else you would like to say at this time?

Judge **Milburn**. Mr. Chairman, the only other thing I would like to say is I would, of course, like to thank Senator Baker for recommending me. I would like to thank the President of the United States for nominating me. I appreciate so much Senator Sasser being here and Congresswoman Lloyd. And I appreciate the opportunity to be here, and I thank you and your staff for the courtesies which have been extended.

The **Chairman**. I think that is all the questions we have. We hope you will have a successful and happy tenure on the bench.

Judge **Milburn**. Thank you, Mr. Chairman.

The **Chairman**. You are now excused.

We will now take Mr. Baldock. Mr. Baldock, if you will come around and have a seat.

Mr. Baldock, I do not believe I have sworn you, have I?

Mr. **Baldock**. No, sir.

The **Chairman**. The testimony you will give in this hearing will be the truth, the whole truth and nothing but the truth, so help you God.

Mr. **Baldock**. So help me God.

The **Chairman**. Mr. Congressman, would you like to say a few words in his behalf?

STATEMENT OF HON. JOE SKEEN, A U.S. REPRESENTATIVE FROM THE STATE OF NEW MEXICO

Mr. **Skeen**. Mr. Chairman, I would be delighted to.

I want to thank you for your forbearance today. We are debating the debt ceiling limit, the possibility of raising it, in the House, and that is enough to slow anybody down today after one reads the new figures. However, I do want to take this opportunity to come over and recommend to you, and commend to you a friend of mine and a constituent from New Mexico, Mr. Baldock, to the position as Federal judge. I appreciate very much your giving me this small amount of time. I will not take a great deal of your time to make a statement in his behalf.

Without any reservation, I heartily support this nomination and commend him to you.

The **Chairman**. We are honored to have you before us, Mr. Congressman. And I might say to Mr. Baldock that the Congressman is held in high esteem here in the Congress and his recommendation will certainly inure to your benefit.

We are glad to have you with us.

Mr. **Skeen**. Thank you, Mr. Chairman.

The **Chairman**. Without objection, the résumé of Bobby Ray Baldock will be placed in the record.

TESTIMONY OF BOBBY RAY BALDOCK, NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF NEW MEXICO

The **Chairman**. Mr. Baldock, do you have any family here that you would like to introduce, or friends?

Mr. **Baldock**. Yes, Mr. Chairman.

Mr. Chairman, I would like to present my wife Jane Spunky Baldock, and her sister Delores Singleton, my brother-in-law Bob Singleton. I also have here another young man who is living here in Washington right now, but from New Mexico, Larry Sides.

The **Chairman**. We are glad to have you people here.

I just have a few questions, Mr. Baldock. It seems you come highly recommeded.

Mr. Baldock, do you think the transition from advocate to impartial jurist will be a difficult one, and what steps have you taken at this point to prepare and familiarize yourself with the heavy caseload which awaits you in New Mexico?

Mr. **Baldock**. The first part of that question, Mr. Chairman, yes, I think it is going to be difficult at first when you have been a trial litigant for 23 years, and you have been in the arena. I am going to have to learn to listen and not talk so much.

As to the second part of the question, I have been familiarizing myself again with the Rules of Evidence, the Rules of Procedure, and reading through the jurisdiction books. I have not had the opportunity yet to attend the Judges' College, which is a tremendous aid, and I am looking forward to it. I believe that I will be able to make that transition.

The **Chairman**. Mr. Baldock, do you think it would be helpful to you as a U.S. district court judge to have a sentencing commission to establish uniformity in sentencing? Sentencing now varies so much. One judge may give a man 2 years and another one 30 years. And we have a sentencing bill now that will set up some limits where there will not be such a variance. And if a judge goes above or below, then he will have to explain just why he did that.

Do you think that would be of help to the judges?

Mr. **Baldock**. Mr. Chairman, as a new judge, I feel that it would be very helpful to me. I think this is one of the criticisms that has been leveled at both the Federal and State courts that there is no uniformity in the sentencing. The consequence is there have been tremendous criticisms across the country.

I think, still basically, within those guidelines, the judge will be the one presented with particular facts and is then going to have to call that shot within those guidelines. But I think to me it would be a tremendous aid.

The **Chairman**. Mr. Baldock, what, in your opinion, is needed to speed up the disposition of Federal cases? Would it be more judges, magistrates, or changing of criminal procedures, or judges putting in longer hours? Just what do you think can be done to clear the dockets and speed up trials?

Mr. **Baldock**. I know coming from the practicing bar, many times my feelings along those, Mr. Chairman, have been, No. 1—two things I have felt have caused the slowdown: No. 1 is maybe lazy lawyers and judges that do not take their time seriously and proceed in a diligent manner. I may know the answer to that question a little bit better in a few months. But I feel perseverance in attempting to, knowing that we are dealing with human beings, I do not believe the answer necessarily at this point in time is more judges, but the opportunity to use your time diligently and well.

The **Chairman**. And, if necessary, run court a little longer to help clear up the dockets?

Mr. **Baldock**. That is correct, Mr. Chairman.

The **Chairman**. Mr. Baldock, it has been suggested that our prisons turn prisoners into more professional criminals. What, in your opinion, can or should be done to improve prisoner rehabilitation?

Mr. **Baldock**. That question would presuppose I have a working knowledge of the penitentiaries, which I do not have that well of a working knowledge of. I do agree that there needs to be something done with reference to helping rehabilitation. But I also recognize that first priority is that that is a punishment. They are there for a penalty and not necessarily to relax and enjoy something. So I do not know that I know the answer to that, Mr. Chairman.

The **Chairman**. I have always felt that if our prisons could arrange employment for prisoners and keep them busy, it might help to improve the behavior of prisoners. Then, too, there is a tremendous reservoir of manpower and womanpower that could be used and in so many cases it is not being utilized. For instance, if we could erect a factory right by each prison so they could work from there, or have farms where they would work farms and take advantage of this manpower. It would be better for the prisoners too to do that rather than sit idle in prison.

How do you feel about that?

Mr. **Baldock**. We have in New Mexico, Mr. Chairman, a program similar to that, one in my home community, called The Roswell Correctional Center, where these men and women are given the opportunity every day to go to work. They are taken into the community and work for employers, and they are brought back into society on a daily work basis. That program seems to be working very well. So, in that type of situation, I think that would be excellent.

The **Chairman**. Mr. Baldock, in answering the committee's questionnaire, addressing judicial activism, you stated, in part:

> The courts do not have the time or the manpower to continue to oversee judgments and orders. A court's decision must have the effect of finality.

Now, what are the standards that you would use in deciding that your court might have a continuing administrative responsibility to oversee the implementation of one of its orders?

Mr. **Baldock**. First, Mr. Chairman, I think, in my personal opinion, that is what has gotten some of the courts in trouble is their continued attempt to administer their orders. I see that as being a judicial activist's role when courts continue to reach out and bite off more than they are capable of handling and, in many instances, more than they should even attempt to. So my standard is to be very sure and withdraw from that position and not try to reach out and take administrative duties over something that I should not have.

The **Chairman**. Some judges have taken over running school districts, and others have taken over operation of State institutions of various kinds, and it has caused quite a lot of confusion in some places. Do you feel that the State and subdivisions of the State should run its own business and not Federal judges and the Federal Government attempting to intervene and inject itself into the lives of the people in certain ways?

Mr. **Baldock**. I certainly do, Mr. Chairman. My wife has spent 6 years previous to this on the local school board. I believe that the local people are capable of properly running and handling their school districts and do an outstanding job. And I do not believe that I personally, as a Federal judge, sitting in the community several miles away, understand their problems as well as they do. I do not want, and do not intend to even seek that type of supervisory role.

The **Chairman**. Well, there are acts of the kind that I described there that have caused many people to say, "Get your Federal Government off my back." And, in many instances, a lot of people feel that the Federal Government has gotten onto the backs of the people too much and they have gone to running State institutions and interjecting itself in such a way, and which they really do not have authority under the Constitution.

Is there anything else you would like to say, Mr. Baldock?

Mr. **Baldock**. Mr. Chairman, other than I am delighted to be here and would like to thank you for your time and your questions.

The **Chairman**. Well, we wish you a happy and successful tenure on the bench. I feel that we can recommend all of you people we have heard here today to the full committee when it meets to act, and I hope that will not be too long.

We will try to get your nominations out as soon as we can.

Thank you for coming and thank all of you here today for your appearance.

The committee stands adjourned.

[Whereupon, at 2:50 p.m. the hearing was concluded.]

BIOGRAPHIES

JULIA SMITH GIBBONS

NOMINEE, U.S. DISTRICT JUDGE, WESTERN DISTRICT OF TENNESSEE

Birth: December 23, 1950, Pulaski, Tenn.
Legal residence: Tennessee.

Marital status: Married to William Lockhart Gibbons, 1 child.

Education: 1968-72—Vanderbilt University, B.A. degree; 1972-73, 1974-75—University of Virginia, School of Law, J.D. degree; 1973-74—Vanderbilt University, School of Law.

Bar: 1975—Tennessee.

Experience: 1975-76—Law clerk to Hon. William E. Miller, U.S. Court of Appeals, 6th Circuit; 1976-79—Associate, Farris, Hancock, Gilman, Branan & Lanier; 1979-81—Deputy Counsel and Legal Advisor to Governor Lamar Alexander, State of Tennessee; 1981 to present—Circuit Judge, Fifteenth Judicial Circuit, State of Tennesee.

H. TED MILBURN

NOMINEE, U.S. DISTRICT JUDGE, EASTERN DISTRICT OF TENNESSEE

Birth: May 26, 1931, Cleveland, Tenn.

Legal residence: Tennessee.

Marital status: Married to Alice Dillow Milburn, 2 children.

Education: 1949-50—University of Chattanooga; 1950-51—Boston University; 1951-53—East Tennessee State University, B.S. degree; 1956-59—University of Tennessee, College of Law, J.D. degree.

Bar: 1959—Tennessee.

Military service: 1953-56—U.S. Army.

Experience: 1959-73—Bishop, Thomas, Leitner, Mann & Milburn (firm had several different names during this period); 1973 to present—Circuit Court Judge, Sixth Judicial Circuit, State of Tennessee.

BOBBY RAY BALDOCK

NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF NEW MEXICO

Birth: January 24, 1936, Rocky, Okla.

Legal residence: New Mexico.

Marital status: Married to Mary Jane Holt Baldock, 2 children.

Education: 1954-56—New Mexico Military Institute, Junior College Diploma; 1956-60—University of Arizona, J.D. degree.

Bar: 1960—Arizona; 1961—New Mexico.

Experience: 1960 to present—Associate, then partner, Sanders, Bruin & Baldock, Roswell, N.M. 1962-81—Adjunct professor, Roswell Campus, Eastern New Mexico University.

CONFIRMATION HEARING ON:

D. LOWELL JENSEN AND LEONARD D. WEXLER

WEDNESDAY, MAY 25, 1983

U.S. Senate,
Committee on the Judiciary,
Washington, D.C.

The committee met, pursuant to notice, at 2 p.m., in room 226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Staff present: Duke Short, chief investigator; William Christensen and Allan Spence, investigators; and Mary Lynn Batson, investigative clerk.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The Chairman. The committee will come to order.

We meet today to consider the confirmation of two nominations. One, Mr. D. Lowell Jensen of Virginia, temporarily of Virginia, at least, to be Associate Attorney General. I believe Senator Warner and Senator Trible are interested, and Senator Wilson of California, Mr. Jensen's home State.

The other is Mr. Leonard D. Wexler of New York to be U.S. district judge for the Eastern District of New York.

I would suggest that Mr. Jensen come around now so Senator Wilson can make his statement and leave. I know he has got to leave and go and vote, which I will have to do in a few minutes, too.

Just come around, Mr. Jensen, and have a seat.

Mr. Jensen, while you are standing, I might just swear you in. The testimony you will give in this hearing will be the truth, the whole truth, and nothing but the truth so help you God?

Mr. Jensen. Yes.

The Chairman. Senator Wilson, we are delighted to have you here. With a number of Californians being appointed to different positions, we are pleased to see you as often as you can come.

Senator Wilson. Thank you very much, Mr. Chairman.

The Chairman. You may proceed now and speak on behalf of this fine gentleman.

STATEMENT OF THE HON. PETE WILSON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator Wilson. Thank you very much, Mr. Chairman. I greatly appreciate the Chair's courtesy and it is a particular privilege for me today to introduce to the committee a very distinguished Californian, someone whom I have been privileged to know for a long time, both in person and, for an even longer period, by reputation.

His reputation, to put it simply, is superb. In terms of the respect that he commands among his peers in professional law enforcement, Lowell Jensen has not just an enviable reputation but one that is, if not without parallel, at least to be held up as a model for those who have chosen to enforce the laws of our land.

He has a very distinguished background. As you are aware, he is presently Assistant Attorney General in charge of the Criminal Division. President Reagan announced that nomination in 1981, and he has performed in the role of Assistant Attorney General as a very logical next step to a distinguished career which served the people of Alameda County for very many years, first as an assistant district attorney and then as district attorney from 1969 until he assumed his present position.

He is a graduate of local schools in Alameda County. He took his undergraduate degree at the University of California at Berkeley and then graduated from the University of California School of Law, Boalt Hall, in 1952. That is a distinction of which I am particularly pleased since I am a fellow alumnus of that institution.

I personally came to know Lowell Jensen some years later when he was one of the founding members of the California Council on Criminal Justice. He has taught. He has been a lecturer, a panelist, and instructor. A singularly successful prosecutor.

The district attorney's office in Alameda County is one that deservedly enjoys a national reputation. They have been confronted with some spectacular challenges, to say the least, and Mr. Jensen's experience as a prosecutor includes some nationally renowned cases.

The People v. *Joseph Remior, Russell Little.* This involved the assassination of Marcus Foster, the superintendent of the Oakland schools by members of the so-called Symbionese Liberation Army.

The case of *The People* v. *Huey Newton,* in which the founder of the Black Panther Party was charged with murder of an Oakland police officer.

The case of *The People* v. *Mario Savio, et al.* which was not only a spectacular prosecution but a challenge to his ingenuity as an administrator since, in that particular prosecution, he had the responsibility for prosecuting 778 defendants in a 4-month trial. There was a 4-month nonjury trial of 155 defendants in a single trial. This involved the so-called free speech sit-in at Sproul Hall at the University of California,

Mr. Chairman, rather than take more of your time, I will just tell you that I am particularly pleased and feel it a privilege to be able to introduce—or reintroduce—Mr. Jensen to the committee.

I think perhaps the highest praise that one can earn is the judgment of his peers. I happened recently to have dinner with the district attorney of my home county of San Diego, who just as a matter of incidental intelligence, happens to be a member of another political party than yours and mine and Mr. Jensen's. But, what we all have in common is a very great respect for the law, and in his judgment—this is perhaps not quite a verbatim quote—but he said, "I cannot think of any post that Lowell Jensen could be appointed to that I would not be pleased and happy to see him serve in because I think that he is one of the great professionals that I have known."

I feel that way, and I think that this is an appointment that will cast great credit upon the administration. More importantly, I think, the American people will be superbly served by someone who has already provided a career of distinguished public service. With that, Mr. Chairman, I will conclude by thanking you and urging the committee to recommend enthusiastically the confirmation of Mr. Jensen.

The **Chairman**. Thank you very much, Senator.

Mr. Jensen has been serving in a very important position and has made an outstanding record down there.

Mr. Jensen, it is good to have a Senator like Senator Wilson come up and endorse you so highly from your original home State. I commend you and I am sure you appreciate it.

TESTIMONY OF D. LOWELL JENSEN, NOMINEE, ASSOCIATE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. **Jensen**. I am most appreciative of that, Mr. Chairman. I thank the Senator. Those kind remarks were just most appreciated on my part, and I think it is gracious of him to do that.

The **Chairman**. We all hold Senator Wilson in highest esteem. He is greatly respected in the Senate. Thank you very much, Senator.

Senator **Wilson**. Thank you.

The **Chairman**. Now, would you like to introduce your family, Mr. Jensen, that you have here today.

Mr. **Jensen**. I would very much like to do that, Mr. Chairman. Unfortunately our three children are all in California. I just came back from California last night, and my wife is there with our youngest son who is a college graduate this week.

The **Chairman**. Do you have any friends you want to introduce?

Mr. **Jensen**. I have various people here from the Department of Justice.

The **Chairman**. Do you want to introduce them?

Mr. **Jensen**. There are about 20 people here. Fortunately, they are all the people I work with, the deputies and the clerical people and the secretaries and the staff of the Criminal Division.

The **Chairman**. You work with these people and they are still for you?

Mr. **Jensen**. They are still here.

The **Chairman**. Let us let them all stand,

Mr. **Jensen**. They would be very happy to.

The **Chairman**. That is quite a large crowd you have working with you. Thank you very much.

Mr. **Jensen**. Thank you.

The **Chairman**. Now, we are on a time limitation here. I have got to get out of here in about 12 minutes to go and vote. We will try to finish by then. Let me ask you just a few questions here and if there are any more, we can submit them to you.

You have served as the Assistant Attorney General for the Criminal Division for approximately 2 years. During this time, you were charged with the responsibilities for developing and enforcing criminal statutes in a vigorous, fair, and effective manner. Mr. Jensen, what do you see as your major accomplishments during this period?

Mr. JENSEN. Well, I suppose that is best left to the judgment of others, but since you give me the opportunity, let me say that it has been a privilege to be in this Department of Justice.

As you have noted, the Criminal Division essentially deals with the litigation, the operational activities of Federal law enforcement so that has chiefly been my duty.

However, I have had a chance to work on the policies and setting the agendas of the Department of Justice. I think that those are well in place in terms of their emphasis on Federal, State, and local relationships, for example, which is one of my particular concerns, given my background. I am happy to see that that has been developed.

I have had a chance to participate in the policy development on violent crime, drugs, and organized crime. I have had a chance to appear on many occasions in Congress and testify on various bills, and I hope that I have been able to contribute to the work of Congress in that regard.

But chiefly, I think that the Criminal Division in the Department of Justice, as I say, is a litigating division. The Department has a rich history of integrity and performance, and I think anyone who has an opportunity to serve in the Department, if you look back on accomplishments, what you would like to be able to say is that you have been able to be a part of the leadership of that Department and to maintain its integrity and performance. I hope that that would be the judgment as to my accomplishments.

The CHAIRMAN. Thank you very much.

Without objection, we will place your biography in the record.

Now, Mr. Jensen, the Associate Attorney General, the position for which you have been nominated, assists the Attorney General and the Deputy Attorney General in formulating and implementing policies and programs of the Department pertaining to criminal matters. He also coordinates program activities and has directional authority over the head of the Criminal Division, Immigration and Naturalization Service and the Drug Enforcement Administration, to name but a few.

Mr. Jensen, do you foresee any change in the direction of the organizations under your control or will you generally follow the policies established by your predecessor?

Mr. JENSEN. I would generally follow those policies. As I said, I have had the chance to play some role in the development of the policies, and as I see the course of the Department now, the real challenge is the implementation of the important policies that have been set.

So I believe my role will be to pursue and implement those policies.

The CHAIRMAN. Mr. Jensen, what areas of criminal activity require the greatest degree of enforcement effort? Would it be violent crime, white-collar crime, narcotics or organized crime? And what priority will you place on each of these activities?

Mr. **Jensen**. I suppose the difficulty when you look at an array of problems like that in the criminal justice world is that the challenge is to improve the effectiveness of your enforcement efforts in every one of those areas. I hesitate to prioritize them in a sense that any one is more important than another.

I could say that as far as organized crime, drug trafficking and violent crime, in a sense, they are tied together, and the very important initiatives that have been undertaken by the Department now, I think, would deal with all those issues.

If we can get at drug traffickers, we will also get at organized crime. We will also have an impact upon violent crime. At the same time, I think that it is important to say we need to maintain our presence and our ability to improve our effectiveness in enforcement of white-collar crime.

I think that is the challenge, to keep all those priorities on track.

The **Chairman**. Mr. Jensen, I have two or three more questions here. We have kind of a shortage of time. Would you just answer those for the record.

Mr. **Jensen**. I surely will.

The **Chairman**. Now, Senator Trible has sent a statement endorsing you. And without objection, we will place that in the record at the conclusion of the questions that you answer for the record.

And Senator Warner also endorses you, and if he gets here, he can make his statement.

[The prepared statement of Senator Trible follows:]

STATEMENT OF SENATOR PAUL S. TRIBLE, JR.

Mr. Chairman, I am pleased to recommend to the committee the confirmation of Lowell Jensen, who has been nominated for the position of Associate Attorney General by the President. Mr. Jensen has a long and distinguished record of public and private service. His training and experience indicate that he will be a valuable asset to the Department of Justice.

Mr. Jensen's education, professional career, and distinguished teaching background have given him an unequaled expertise in many areas of criminal law. He received his undergraduate degree from the University of California at Berkeley in 1949, and he earned his law degree from the University of California School of Law at Boalt in 1952.

He has distinguished himself in both his private practice and as the District Attorney of Alameda County, California. Mr. Jensen has served with distinction for two years as an Assistant Attorney General in the Criminal Law Division of the Justice Department. He has complemented his practical experience with work as a lecturer, panelist and instructor on criminal law.

Mr. Jensen's skills as a prosecutor have been tested in some of the most publicized trials in recent memory, and his skills as an instructor are highly respected. His many professional activities are testimony not only to Mr. Jensen's professional dedication, but the esteem in which he is held by his colleagues.

I urge the committee to act favorably on Mr. Jensen's nomination.

The **Chairman**. Now, is there any opposition on the part of anyone to Mr. Jensen? Is there anyone present who wants to testify to the contrary?

There appears none, so Mr. Jensen we are very pleased to have you with us. We hope you enjoy your new service and it is a very important and challenging responsibility and we are sure you will do a fine job, and we will submit additional questions.

Mr. **Jensen**. Thank you very much, Senator. I look forward to working with you.

[Mr. Jensen supplied the following information:]

U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

June 7, 1983

Honorable Strom Thurmond
Chairman, Committee on the
Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

During my confirmation hearing on May 25 before the Senate Judiciary Committee, you indicated that because of time limitations the Committee would submit additional written questions to me for response. Subsequently, Mr. Short of the Committee's staff provided me with the additional questions which you did not have an opportunity to ask during the course of that hearing. Set forth below are my responses to the additional written questions submitted to me by the Committee.

1. Mr. Jensen, in a more specific area, what is the status of the new Drug Task Force operations?

Following President Reagan's announcement of the Drug Enforcement Task Forces on October 14, 1982, the Department of Justice and the investigative agencies involved developed a set of Guidelines defining goals, targets, procedures, case standards, and administrative structure, among other things. These Guidelines were issued by the Attorney General on January 21, 1983. Since that date, Task Force Offices have been established in each of the twelve "core-cities" around which the Task Forces are organized. Each Task Force Office which encompasses several judicial districts is charged with the responsibility of coordinating all Task Force investigative and prosecutive action throughout the defined region, and to accomplish this task an Assistant United States Attorney and a supervisory agent for each involved investigative agency have been assigned to each Office.

In addition to these coordinators, Task Force investigative agents and prosecutors have now been assigned to sixty-seven of the ninety-four judicial districts in the United States, with assignments to an additional seven districts expected shortly. This staffing has been accomplished in a deliberate, careful manner since we have sought to utilize only the most experienced prosecutors and investigative agents to handle the highly complex cases targeted by the Guidelines. Currently, we have designated approximately 250 cases as Task Force cases; these cases involve investigations which warrant the involvement of more than one investigative agency, require significant attorney resources because of electronic surveillance, extensive grand jury work, and forfeiture action, and involve a sizable drug trafficking organization. These designated cases are at various stages of development. Some on-going investigations were selected initially to ensure that the full range of Task Force resources were put to productive use immediately. We anticipate that there will be some major indictments and successful prosecutions arising out of these investigations in the not too distant future. Other investigations designated as Task Force cases will require extensive financial investigations and grand jury work, and may not come to fruition for some time. However, these extended investigations often are the only way to bring to justice those individuals who direct and finance these large-scale organizations. We are moving expeditiously consistent with good management practices to complete attorney and agent staffing of the Task Force operation and to designate additional Task Force investigations.

2. Mr. Jensen, where, in your opinion, should we concentrate our drug enforcement efforts? Would it be in tracing the money that is used to purchase narcotics, arrests of the large dealers involved in international networks, or exactly where would be the best place to start?

In the Guidelines for the Drug Enforcement Task Forces we outlined the principal targets on which we believe we should concentrate our drug enforcement efforts. In general our primary focus is large-scale narcotics trafficking organizations. More specifically, we are targeting traditional organized crime figures, major outlaw motorcycle gangs, other organized criminal groups such as prison gangs, organizations that finance, import, or distribute controlled substances, and physicians and pharmacists who illegally dispense substantial quantities of prescription drugs. While we do not intend to lessen our traditional narcotics enforcement efforts, we are putting new resources and primary emphasis on attacking the major narcotics trafficking networks. In sum, we will target, investigate, and prosecute individuals who organize, direct, finance, or otherwise engage in high-level illegal drug trafficking enterprises, including large scale money laundering organizations.

To accomplish these objectives, we are developing a coordinated drug enforcement effort to encourage the maximum cooperation among all drug enforcement agencies. Also, we are seeking to work effectively with state and local drug enforcement agencies to maximize our impact on the narcotics problem. Finally, we will make full use of financial investigative techniques, income tax law enforcement, sophisticated investigative tools, and forfeiture actions in order to identify and convict high-level traffickers and to seize assets and profits derived from drug trafficking. We believe that the forfeiture of drug profits is especially important to this effort since it is imperative that we take the profit out of drug trafficking. To assist us in accomplishing this objective, we have set up an Asset Forfeiture Unit within the Department.

3. With respect to the series of questions submitted regarding our approach to the prosecution of violent crime, career criminals and cases involving firearms, I submit the following comments:

In addressing the violent crime problem which concerns all of us, it is important to concentrate resources upon those individuals who are the cause of criminal violence in this country, and in particular, to focus our efforts upon those persons who have a history of violent criminal activity. Indeed, as the President has stated, we need to target career criminals and the organized criminal element in America for special attention in our law enforcement efforts. As a number of studies have indicated, a disproportionate share of violent crime is committed by a small proportion of individuals who have made a career out of crime. In our enforcement efforts, we have recognized that it is the violent offender armed with a firearm who is responsible for a substantial part of the violent crime problem which our nation faces. We have supported legislation which advocates firm and speedy application of mandatory criminal penalties against those persons responsible for committing violent crime. In particular, I have previously testified before Congress in support of legislation which targets certain third offenders armed with a firearm for prosecutions which would result in mandatory sentences of fifteen years to life without possibility of parole. We have also supported legislation which would provide financial assistance to state and local prosecutors who want to develop an effective career criminal prosecutive program. I would note that in my experience as a district attorney, we found that the development of an effective career criminal prosecutive program was an important means of focusing special prosecutive resources and attention on those individuals committing a disproportionate share of our violent crime. Finally, we have specifically instructed all United States Attorneys to give priority to prosecution of individuals who are repeat violent offenders, and to focus their limited resources on these offenders.

Equally important, we have consistently urged the imposition of additional mandatory penalties for those defendants who unlawfully use a firearm in commission of another offense. The imposition of a mandatory term of incarceration for the use of a firearm in the commission of an offense is both an appropriate penalty as well as a deterrent against the use of firearms for violent purposes. The imposition of such mandatory penalties focuses the issue directly on the real problem, and that is the criminal who uses firearms unlawfully. This is where we should concentrate our efforts.

Finally, there should be no doubt that we will vigorously enforce all federal firearms statutes. We have issued directives to all the United States Attorneys to enforce the existing firearms statutes with vigor, to use necessary resources to prosecute felons who are arrested in possession of firearms, and to investigate and prosecute offenses involving trafficking in firearms. Moreover, we have developed cooperative efforts between United States Attorneys and state and local prosecutors to ensure that individuals arrested for firearms offenses are prosecuted in the forum which can provide the swiftest, most certain penalties. In sum, the prosecution of cases involving career criminals and firearms is one of our highest priorities, and, we believe, an effective means of dealing with the violent crime problem which is of great concern to all of us.

I appreciate the opportunity to address these additional questions. If there are any other matters which are of interest to the Committee, I would be happy to respond.

Sincerely,

D. Lowell Jensen
Assistant Attorney General
Criminal Division

The **Chairman**. We will ask Mr. Leonard Wexler of New York to come up.

Mr. Wexler, do you swear the testimony you will give in this hearing will be the truth, the whole truth and nothing but the truth so help you God?

Mr. **Wexler**. I do.

The **Chairman**. Would you like to introduce your family, Mr. Wexler?

TESTIMONY OF LEONARD D. WEXLER, NOMINEE, U.S. DISTRICT JUDGE, EASTERN DISTRICT OF NEW YORK

Mr. **Wexler**. Yes. I have with me my wife, Barbara; my daughter, Alison; my two sons, Robert and William; and my niece, Susan Helen.

The **Chairman**. Well, you have a fine family. We are very pleased to have them with us.

Now, Senator D'Amato and Senator Moynihan have indicated an interest in testifying, and if they get here in time, we will allow them to do that. If they do not, we will permit them to put their statements in the record.

You were recommended, I presume, by Senator D'Amato——

Mr. **Wexler**. Yes, sir.

The **Chairman** [continuing]. Who is of the same party as the President, who appointed you, Senator D'Amato is a very able and fine Senator here, and you can feel honored that he chose you to fill this position.

Without objection, we will put a résumé in the record. That will save some time going into detail about your past history.

[The prepared statements of Senators Moynihan and D'Amato follow:]

PREPARED STATEMENT OF SENATOR DANIEL P. MOYNIHAN

Mr. Chairman, I should like to bring to the attention of my colleagues the nomination of Leonard D. Wexler, currently a partner in the law firm of Meyer & Wexler, to United States District Judge for the Eastern District of New York. Mr. Wexler's nomination has received the approval of the American Bar Association.

Following the graduation from New York University Law School in 1950, Mr. Wexler began his practice as an attorney in the firm of Sidney Siben, Esq. Shortly thereafter, he was admitted to the New York State Bar. In 1956, he became a partner in the firm of Meyer & Wexler. Mr. Wexler also founded the Suffolk County Criminal Bar Association in 1965, and currently serves as chairman of the New York State Bar Association's Juvenile Justice program.

Mr. Wexler is an able and experienced member of the legal profession, and is to be congratulated on his nomination.

PREPARED STATEMENT OF SENATOR ALFONSE M. D'AMATO

Mr. Chairman, it gives me great pleasure to present to this committee, Mr. Leonard D. Wexler of Islip, New York, nominated to be United States District Court Judge for the Eastern District of New York.

Len Wexler is considered to be one of the best trial lawyers in the nation. He is well-known and revered in judicial quarters, and throughout the Long Island legal community, for his high ethical standards and integrity.

A World War II veteran of the U.S. Army, his acts of bravery earned him two Bronze Stars. He graduated from New York University Law School in 1950 and, as an accomplished attorney in Suffolk County, he has handled over 2,500 civil and criminal trials.

Len Wexler is a past president and founder of the Suffolk County Criminal Bar Association, a former director of the Suffolk Bar Association and member of the New York State Bar Association.

Mr. Chairman, I am proud that an individual of the calibre of Len Wexler would serve as a member of the court. His appointment further complements the excellent reputation of the sitting judiciary in the eastern district and I encourage your favorable consideration.

Thank you.

The CHAIRMAN. Mr. Wexler, I have just a few questions here. You have been a practicing attorney since 1950. Now, you have been nominated for the position of U.S. district court judge. What do you feel will be the most rewarding aspect to serving in this capacity?

Mr. WEXLER. I have always respected the U.S. Constitution and the system. I am deeply indebted to my country for all it has given me. I think the opportunity to serve, to do justice to all who appear before me will be the greatest accomplishment I can do.

The CHAIRMAN. Mr. Wexler, would you tell the committee how you would handle an instance in which counsel for one of the parties in your court was obviously not a skilled litigator and was not prepared to adequately represent the interests of his or her client?

Mr. WEXLER. Well, I certainly would not do anything in the presence of the jury. Any statement by a judge could prejudice either side. I would take both counsel into chambers and advise the one who I felt was not doing a competent job to seek help and get himself a competent counsel to be co-counsel with him.

The **CHAIRMAN**. Mr. Wexler, I consider judicial temperament to be a prerequisite for a Federal judge. I have seen some judges reprimand publically attorneys, jurors, and other officials around the courtroom, which I think is inexcusable.

Would you mind giving us your thoughts on this subject?

Mr. **WEXLER**. Well, I have agreed with you. I have appeared thousands of times before judges. I think a judge should be patient, understanding, and polite. A judge who lacks judicial temperment regardless of how learned he is causes disrespect not only to himself but the entire bench and the entire system.

The **CHAIRMAN**. Mr. Wexler, we have a bill pending that would set up a sentencing commission that would put some limits, a maximum and minimum limits on sentencing. The judge would have to explain if he went above or below those. Some judges have varied so in their sentencing we felt it might be fairer to defendants as a whole if this were done. How would you feel about that?

Mr. **WEXLER**. I agree with that, Mr. Chairman. I have recently read the seminars on new judges, and in that, they specifically state there are no standards. As a freshman judge, I believe there should be standards that would help me and others who appear in the court.

The **CHAIRMAN**. Mr. Wexler, where, in your view, does a conscientious judge draw the line between judicial decisionmaking and legislative decisionmaking, and what are the criteria to consider in resolving whether or not a decision was the type that should be made by a judge as opposed to an elected legislative body?

Mr. **WEXLER**. Being a believer in the Constitution and the system of separation of powers, I believe the judge should decide issues of law and grievances of the parties before him and not legislate. Legislation should be left to Congress with their varied interests and representation, their debates, and their discussions rather than to one man.

The **CHAIRMAN**. Mr. Wexler, we hope you have a happy and successful tenure on the bench, and we are very pleased that both of your splendid Senators from New York have endorsed you, and I understand Senator D'Amato is on the way now. So we are just going to be in recess here a few minutes while I go and vote. Senator D'Amato will come and testify at that time, after which I will ask counsel to end the hearing.

So we will just be in recess a few minutes.

[Whereupon, a short recess was taken.]

Mr. **SHORT**. Senator D'Amato has indicated he will not be able to attend as previously planned. He has, however, sent a statement over in which he highly supports you, Mr. Wexler. He regrets that he is unable to be here. So at this time we will adjourn the committee subject to the call of the Chair.

[Whereupon, at 2:24 p.m., the committee adjourned subject to the call of the Chair.]

BIOGRAPHIES

D. LOWELL JENSEN

NOMINEE, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Born: June 3, 1927, Brigham, Utah.

Legal residence: California.

Marital status: Married to Barbara Jane Cowin, three children.

Education: 1945-1952—University of California, B.A. degree (1949), J.D. degree (1952).

Bar: 1953—California.

Military service: 1952-1954—U.S. Army, corporal.

Experience: 1954-1966—Assistant district attorney, Alameda County, Calif.; 1966-1970—Deputy district attorney, Alameda County, Calif.; 1970 to present—District attorney, Alameda County, Calif.

LEONARD D. WEXLER

NOMINEE, U.S. DISTRICT JUDGE, EASTERN DISTRICT OF NEW YORK

Birth: November 2, 1924, Brooklyn, N.Y.

Legal residence: New York.

Marital status: Married to Barbara Blum, 3 children.

Education: 1945-47—Indiana University, B.S. degree (1948); 1947-48—Denver University; 1948-50—New York University, LL.B degree.

Bar: 1951—New York.

Military service: 1943-45—U.S. Army.

Experience: 1950-56—Associate, Sidney R. Siben; 1956 to present—Partner, Meyer & Wexler.

CONFIRMATION HEARING ON:

GENE CARTER AND LOIS HAIGHT HERRINGTON

WEDNESDAY, JUNE 8, 1983

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 2:10 p.m., in room SD-226, Dirksen Senate Office Building, commencing at 10:10 a.m., Hon. Strom Thurmond (chairman of the committee) presiding.

Staff present: Duke Short, chief investigator, and Allan Spence, investigator.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. The committee will come to order.

We meet today to consider the confirmation of the U.S. district judge from Maine. Justice Gene Carter has been nominated by the President. And confirmation of Assistant Attorney General, Mrs. Lois H. Herrington, to be Assistant Attorney General in the Office of Criminal Justice Assistance, Research, and Statistics.

We are very pleased to have these many distinguished people here.

And, Senator Cohen, we will be glad to hear from you.

STATEMENT OF HON. WILLIAM S. COHEN, A U.S. SENATOR FROM THE STATE OF MAINE

Senator COHEN. Thank you very much, Mr. Chairman. I would like to say it is a great pleasure for me to endorse the nomination of Justice Gene Carter to the U.S. District Court for the District of Maine.

Gene Carter is a very qualified individual to sit on the Federal bench. Since 1980 he has served with distinction as associate justice of the Maine Supreme Judicial Court, and during his tenure on that court, he has displayed integrity, fairness, and judiciousness. His decisions are well reasoned and articulated, and always reflect his deep understanding of the law and his concern for the judicial process.

Prior to his appointment to the State bench, Gene was an outstanding trial lawyer in Bangor, Maine, for over 15 years. During that time his reputation as a brilliant litigator and excellent lawyer spread throughout Maine's legal community. I became personally familiar with Gene's legal talent—as well as his warm and unassuming personality, and I might add, keen sense of humor—

when I practiced law in Bangor, Maine, prior to coming to the Congress.

I will digress from my text for a moment, Mr. Chairman, to tell you a measure of this man's integrity. Each of us have tried a lot of cases during our legal careers, and Senator Mitchell has presided in some of those cases as well. I had a case with Gene Carter that goes back nearly 15 years. To illustrate the measure of his integrity, I recall that once we were fighting for the sum of $500. I was representing the claimant, and he was defending against that claim. We not only went to trial, but we fought the case all the way to the Maine Supreme Judicial Court, and then went back and tried it over again.

Another lawyer might simply say, "Give Cohen his five hundred dollars for his client," but Gene Carter refused to do that. He took much time and effort to fight for what he felt was right, that, I think was a measure of his commitment to principle.

We not only have his intelligence and his activity, his industry and his sense of fairness, but also his commitment to principle because he believed that I was wrong. Fortunately, the court thought I was right, so I can relate that story. But nonetheless, I think it was indicative of the way in which Gene always handles himself. And he is a man of principles.

When appointed, Gene Carter will succeed Judge Edward T. Gignoux, who will assume senior status after 25 years of outstanding service on the Federal bench. Upon learning of Judge Gignoux's intent to retire, I appointed a merit committee, consisting of nine prominent Maine citizens, to assist me in evaluating possible replacements. After extensive debate and deliberation, the panel gave an enthusiastic endorsement to Gene Carter as the most qualified in the nomination.

Since that time, Gene's candidacy has achieved the highest praise that can be given from the American Bar Association and praise from the Department of Justice and the people of Maine.

Mr. Chairman, I consider recommending nominations for the Federal bench as one of the most important duties as a U.S. Senator. The person that the Senate confirms for this position will have a major impact in the State of Maine, and the country I might add, well into the 21st century. I am confident that Gene Carter has the qualifications and dedication to carry on the tradition of excellent justice that Maine has come to know and expect in its Federal judges.

Mr. Chairman, I want to commend you and the committee for moving so quickly. I know you realize that Maine has a large backlog, partially because there was a long gap between the time he had an appointment to fill the position vacated by my colleague, Senator Mitchell. There are well over a thousand cases backlogged, now taking well over 3 years to even get a civil case heard. I know you are aware of this, and I appreciate the way you expedited the hearing process.

I would like for the record to include a letter from Chief Justice Vincent McKusick supporting Judge Carter's nomination, and I would like to have that included in the record.

The CHAIRMAN. Without objection, that will be done.

[The letter referred to follows:]

STATE OF MAINE,
SUPREME JUDICIAL COURT,
Portland, Maine, May 7, 1983.

Re Appointment of Associate Justice Gene Carter of the Maine Supreme Judicial Court to the U.S. District Court for the District of Maine.

Hon. WILLIAM S. COHEN,
U.S. Senate, SH-530, Washington, D.C.

DEAR SENATOR COHEN: It is with considerably mixed emotion that I write to you to state in the strongest terms my best judgment that my colleague, Justice Gene Carter, is superbly well-qualified to serve as United States District Judge for the District of Maine. His leaving the Supreme Judicial Court after less than three years of service will be a great professional and personal loss for me and my other colleagues on this Court. However, I understand all too well why a host of persons who know of Justice Carter's high qualifications for judicial office have sought him out and urged him to make himself available for consideration as the successor to Judge Gignoux.

I have known Gene Carter well as a professional colleague since February of 1967. At that time the Supreme Judicial Court reactivated the Advisory Committee on Civil Rules, of which I served as the chairman and Carter was a member from the beginning. When my final term expired on December 31, 1975, Carter succeeded me as chairman. As you know, he became a member of this Court on September 12, 1980.

Gene Carter was a superb trial lawyer, and in view of the judicial ability and temperament he has already demonstrated on the appellate bench, I know he will be a superb trial judge.

I would identify at least four prime qualities of Justice Carter that make him a fine judge, whether on the trial or appellate level. First is his high intellectual capacity and, perhaps what is even more important, his interest in intellectual activity. Second is his capacity to arrive at a decision after he has intellectually plumbed the depths of any issue before him. Once he has analyzed a problem, there is nothing indecisive about him. That ability to arrive at a decision is important in any judge, but particularly so in a trial judge, required to rule promptly in the course of an ongoing trial. Third, I would identify Justice Carter's ability to articulate, both orally and in writing, the processes by which he has arrived at his decisions. And finally, Gene Carter has an immense capacity for work; he relishes his court work, as he did the practice of law. He always is willing to take on his full share and more of the work of a multi-judge court. He is by all means a "self-starter," an important characteristic for a single Federal trial judge sitting alone in Portland and with only one other judge in the whole district of Maine.

As you are well aware, I am a great admirer of Chief Judge Edward T. Gignoux, who has had a remarkably distinguished judicial career. Justice Carter is entirely worthy of following in the proud tradition of excellence that Judge Gignoux established, and I know of no better way of expressing my high esteem for Carter. The Senate will serve the Federal courts and the nation well by confirmation of Justice Carter's appointment to the United States District Court for the District of Maine.

With all best wishes,

Sincerely,

VINCENT L. MCKUSICK,
Chief Justice.

Senator COHEN. Mr. Chairman, a couple of other items come to mind. I have always thought of Gene Carter as possessing that unique combination of being an individual who thinks like a man of action and who acts like a man of thought. I recall Justice Cardozo's book, "The Nature of the Judicial Process." He had a footnote that I recall reading many, many years ago: He said that in the long run there is no guarantee of justice except the personality of the judge.

I do not know whether that is an accurate reflection of our judicial system or not. I would hope that is not the final test. But no doubt the personality of a judge does have a great deal to do with the quality and caliber of justice that is dispensed, and I just want to say to the chairman and for the record that I know of no other individual in Maine that I would have more confidence in than Gene Carter if I had to rest my case on the personality of the judge.

The CHAIRMAN. Justice Carter, I do not see how anybody could have spoken any more artfully about someone as Senator Cohen did about you. You must be a very fine lawyer and a very fine judge and a very fine man. I presume Senator Cohen recommends you for this position, and he naturally wants to get his appointee through. But at the same time, I do not think he could have expressed himself in any more complimentary terms than he did about you.

Now, we also have the other distinguished Senator from Maine here, and we would be very pleased to hear from him. Senator Mitchell.

STATEMENT OF HON. GEORGE J. MITCHELL, A U.S. SENATOR FROM THE STATE OF MAINE

Senator MITCHELL. Thank you, Mr. Chairman.

It is a pleasure for me to appear today before this committee to introduce, along with Senator Cohen, Gene Carter, who has been nominated by the President to the position of U.S. district judge for the District of Maine. I am honored that this committee extended the invitation for me to be here, and I am pleased to add my voice.

He is eminently qualified to assume the role of Federal judge. His is an exceptionally appropriate nomination. Gene Carter has been a distinguished associate justice of the Maine Supreme Judicial Court since 1980. Before that he was one of the finest attorneys in Maine over a 17-year legal career. Prior to that he served as clerk to the Honorable J. Spencer Bell of the Fourth Circuit Court of Appeals.

Mr. Carter is a graduate of the University of Maine and the New York University School of Law. After review of Mr. Carter's qualifications, professional experience, personal integrity, and character, the American Bar Association rightfully rated him as exceptionally well qualified to become Maine's next Federal district judge. That ranking, which is the highest the ABA can bestow, comes as no surprise to me.

I can say that because I have been privileged to know Gene Carter personally for many years. And beyond that I have had numerous occasions to observe his competency in court, first while I served as U.S. attorney for Maine, and saw him as a determined and skillful adversary, and then while I served as a U.S. district judge myself in Maine, and he appeared in litigation matters before me.

From my personal experience I can attest to Mr. Carter's grasp of the law, his skill, and his sense of justice. He possesses the highest personal integrity and character, and he has proven to be a competent, conscientious attorney. I have not the slightest doubt that Gene Carter will be an outstanding Federal judge, and I will highly recommend him to become U.S. district judge for the District of Maine.

I might say, Mr. Chairman, that I have a special regard for this position, because I am one of only 12 persons who in the whole history of Maine have served as Federal judge. We have had, fortunately, a tremendous succession of very able persons, most especially the man Mr. Carter will be succeeding, Judge Edward Gignoux, who is now one of the most widely respected and competent district court judges in this Nation.

Mr. Carter knows perhaps better than anyone else that in replacing Judge Gignoux he has some extremely enormous shoes to fill. It will be many years before we are able to say that he has been proven equal to the task of replacing Judge Gignoux. But I can say from my own lifetime of experience as an attorney in Maine, knowing personally most of the attorneys in Maine, and certainly all of those who would possibly be qualified for this position, that Senator Cohen and President Reagan could not have made a better choice to undertake this important task and to replace the great judge who will be leaving next month.

I thank you, Mr. Chairman.

The CHAIRMAN. Justice Carter, that is a high recommendation by Senator Mitchell, who has been a Federal judge himself. From a standpoint, you are going to be better off than he will, because when you retire you will get full pay, when he retires he is only going to get partial pay. But anyway, you come highly recommended, and we wish to thank these able Senators for being here. And I imagine that they have other duties now, and they are excused.

Senator MITCHELL. Thank you, Mr. Chairman.

The CHAIRMAN. Now we will take Senator Wilson, if you will step back and let Senator Wilson step up.

Mrs. Herrington, come up and have a seat.

You may proceed, Senator Wilson.

STATEMENT OF HON. PETE WILSON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator WILSON. Thank you very much, Mr. Chairman.

I am grateful for the courtesy extended by the committee, and acting so promptly upon this nomination. And I am here today to make an enthusiastic introduction to the committee of Lois Herrington, the very distinguished candidate to the Office of the Assistant Attorney General for the Office of Criminal Justice Assistance, Research, and Statistics, the President's nominee as Assistant Attorney General having that state of responsibility.

I also am here representing my colleague, Senator John Heinz, whose duty as manager of legislation on the floor has detained him there. He has requested that I enter into the record his statement, and I would request on his behalf that his statement be entered in full.

I would like as well to quote from it, because it is extraordinarily relevant. Without burdening the committee with an extensive elaboration of Mrs. Herrington's official background and biography, and highlighting only the most relevant parts of it, those most relevant to the Office of Assistant Attorney General for the Office of Criminal Justice Assistance, Research, and Statistics, let me point out that she comes not only as the distinguished attorney having been in private practice for some 10 years before joining the celebrated staff of the Alameda County District Office as a deputy district attorney in 1976, but she has supplemented that legal career in a way that I think has prepared her extraordinarily for the office that she is nominated for by President Reagan.

She has been a counselor, she has been a probation worker, and probation officer in San Joaquin County in California. She has served on any number of task forces dealing with real and practical problems of those suffering from sexual assault, domestic violence, drug abuse. She has been a leader and has been recognized for her leadership by repeated awards from a number of different agencies concerned with welfare of children and women, and she has been involved really as a pioneer in virtually every element of the criminal justice system, which I think prepares her admirably—and I repeat extraordinarily—for the office which she has been nominated.

Let me on behalf of Senator Heinz report from the letter that he has addressed to you, Mr. Chairman, which relates to the specific service that Mrs. Herrington has given.

As the Chairman of the President's Task Force on Victims of Crime, which issued its final report in January of this year:

> I first became acquainted with Mrs. Herrington when Senator Laxalt and I developed and introduced the Omnibus Victims Protection Act early in 1982. Lois Herrington at that time was chairman of the President's Task Force on Victims of Crime. She and other members of the task force worked diligently with us in designing and improving the legislation. * * *
>
> Earlier this year under the leadership of Chairman Lois Herrington, the task force issued a final report which incorporated specific recommendations concerning the treatment of victims of crime. With that excellent report, the task force has charted a legislative course for those of us concerned about crime victims. It is now up to us here in the Senate to continue to move forward with legislation which will "balance the scale of justice." * * *
>
> The Justice Assistance Act now being considered by this Committee would provide the added funding for continued operation of victim assistance programs and research into victims issues. I can think of no one better suited to direct the implementation of the Justice Assistance Act as Director of the Office of Justice Assistance, Research, and Statistics than Lois Herrington. Lois has had an excellent record in local law enforcement in addition to her services as chairman of the President's Task Force on Victims of Crime. She has worked extensively with the people and programs this Act would most affect. But most of all, her true drive and compassion for victims of crime has made her a leader in the campaign for victims' rights and improved services for victims in this country. * * *

Mr. Chairman, I heartily second Senator Heinz' eloquent statement. I have stated my own reasons for enthusiastically endorsing the President's nomination, and I trust that the committee will act fairly to confirm or to recommend confirmation of this nomination. I think that the President has made an extraordinary nomination here, one who will not only will be a credit to the administration, but far more important, one that will serve the people of this Nation in an area in which we are still pioneering, an area which I think the Senate can take some pride in. And I think, to repeat the comment made by Senator Heinz, there is no one better suited to implement the statutory efforts that have been made, the efforts that have been made to try to provide some compassion and redress the injury done to the victims of crime.

This is an extraordinary lady. I will not take more time, I would simply thank the Chairman and thank the committee for their courtesy to her and to me.

The CHAIRMAN. Senator Wilson, thank you very much.

Mrs. Herrington, I just want to say that you come highly recommended. You, I believe, are Chairman of the President's Task Force on Victims of Crime. I think I attended the ceremony in the White House recently where you acted as chairman and presided on that. I don't think I mentioned at that time I was very much impressed with you. And I just told myself: That is a woman that is going to get some position somewhere sometime.

At any rate, I want to congratulate you on your appointment, and you are certainly highly recommended by one of the most esteemed men in the Senate, Senator Pete Wilson. And that will not hurt you.

Mrs. HERRINGTON. Thank you.

The CHAIRMAN. Now, Senator Heinz, I believe, has a statement you want to put in the record, Senator Wilson, because he couldn't be here?

Senator WILSON. Yes, sir.

The CHAIRMAN. Without objection, that will go in the record.

[The prepared statement of Senator Heinz follows:]

PREPARED STATEMENT OF SENATOR JOHN HEINZ

Mr. Chairman: I am pleased to be here this morning to support the Presidential nomination of Lois Herrington to be Assistant Attorney General for the Office of Justice Assistance, Research, and Statistics.

I first became acquainted with Mrs. Herrington when Senator Laxalt and I developed and introduced the Omnibus Victims Protection Act early in 1982. Lois at that time was Chairman of the President's Task Force on Victims of Crime. The need for legislation to recognize and protect victims of crime in our country is an important issue to Lois. She, and other members of the task force worked diligently with us in designing and improving the legislation. Its speedy enactment has given hope to countless individuals and organizations across the country who see the Victims Protection Act as the first step toward fair treatment of crime victims in a criminal justice system which has too long served only the needs of the prosecutor and the defendant. I would like to thank the members and staff of the Judiciary Committee for all the help given us last year in the enactment of S. 2420.

I had the pleasure of testifying before the President's Task Force on Victims of Crime at one of their hearings last year. Earlier this year under the leadership of Chairman Lois Herrington, the Task Force issued a final report which incorporated specific recommendations concerning the treatment of victims of crime. With that excellent report, the Task Force has charted a legislative course for those of us concerned about crime victims. It is now up to us here in the Senate to continue to move forward with legislation which will "balance the scales of justice." I have introduced a bill, S. 704, to establish a nationwide victims compensation program, based on the Task Force's recommendations. This bill would provide funding for established, working programs that now exist in 36 states, allowing them to expand their services to reach more victims in financial need because of a criminal act against them. And it would provide technical assistance to the other 14 states in setting up their own compensation programs.

The Justice Assistance Act now being considered by this committee, would provide badly needed funding for continued operation of victim assistance programs and research into victims issues. I can think of no one better suited to direct the implementation of the Justice Assistance Act as director of the Office of Justice Assistance, Research, and Statistics than Lois Herrington. Lois has an excellent record in local law enforcement in addition to her service as Chairman of the President's Task Force on Victims of Crime. She has worked extensively with the people and programs this act would most affect. But most of all, her true drive and compassion for victims of crime has made her a leader in the campaign for victims' rights and improved services for victims in this country. I am pleased to support Lois Haight Herrington for the position of Assistant Attorney General.

The CHAIRMAN. Senator Wilson, thank you very much. I know you have other duties. We will excuse you.

Senator WILSON. Thank you very much, Mr. Chairman.

The CHAIRMAN. Then we will take Judge Carter.

Judge Carter, hold up your hand and be sworn.

[Whereupon, Justice Gene Carter was duly sworn by the chairman.]

The CHAIRMAN. Now, without objection, we will just put your biography in the record, and I will ask you the questions.

Now, you have some of your family here you would like to introduce. You may have them stand up, and friends if you like.

Judge CARTER. Thank you, Mr. Chairman.

I have two teenage sons who are heavily engaged in their high school final examinations, so they decided that they should stay home and tend to those. And my wife and I agreed that someone should stay home and tend to them. And we agreed that she should stay there and I should come here.

I do have, Mr. Chairman, if I might, three very close personal friends in the audience, Mr. Gerald Rudman, who was previously a partner of mine.

The CHAIRMAN. He may stand up if you care to.

Judge CARTER. And also Mr. and Mrs. George Singal are also here.

The CHAIRMAN. Glad to have you here.

I wonder if Mr. Rudman is related to Senator Rudman? Senator Rudman is a very fine man——

Mr. RUDMAN. Yes, I am his cousin.

The CHAIRMAN. We have a few questions here we will propound to you.

Judge CARTER. Yes, sir, Mr. Chairman.

TESTIMONY OF GENE CARTER, NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF MAINE

The CHAIRMAN. Justice Carter, how familiar are you with the caseload which awaits you, and what recommendations if any do you have for improving the disposition of these cases?

Judge CARTER. Mr. Chairman, I can tell you that as of last Friday the civil caseload backlog in the district of Maine consisted of 996 civil cases, which is approximately 3 years of good hard work for a single judge if he can keep everything on schedule. That comes about as a result of a combination of circumstances over which no one had any particular control.

But I have had in contemplation of this appointment the opportunity to give some thought to how that mountain of litigation might be approached. I think, first of all, the fact that we will now have for the first time in history three district court judges actually acting in the district of Maine will be of great help. We have the manpower to effectively address the problem.

But I also think it is important, it is especially important, that the judge take a leadership role in handling management of the docket and in moving cases along efficiently so that the bar will come to understand that the scheduling of a case is a serious event, and that when a case is scheduled that it is predictable that it will be tried at that time. I think that the judge can make a considerable contribution by using leadership in bringing that about.

The CHAIRMAN. Judge Carter, the committee is aware that there are serious problems in some prisons, particularly from the standpoint of overcrowding and effective rehabilitation. What recommendations, if any, can you offer regarding these subjects?

Judge CARTER. Well, I think to the extent that we are addressing problems of State prisons and problems associated with them that those should be addressed; as a matter of policy, by the legislative branches of those States, and that the type of techniques that will be required will vary, understandably, from State to State in addressing the particular problems and the particular circumstances that arise.

In general, however, addressing those problems that I am familiar with as a result of my exposure to the State of Maine system it seems to me that in the long run we are going to need to devote considerably more in the way of assets to the provision of just physical facilities. But also, I think, Mr. Chairman, that it is very important that we devote considerably more creative thinking to what we are doing in those facilities once we have them and what the orientation is of those programs that exist there.

And I suggest that the experience we have had in the last 4 or 5 years in Maine demonstrates how effective it is to break the prison population down into groups with a common set of problems, a common posture within the prison system, and put them in different facilities so that they can be handled with a particular orientation toward their particular problems and their circumstances, leaving the traditional prison system for incarceration of those recidivist type offenders and those that have been convicted of violent crimes against persons.

The CHAIRMAN. Judge Carter, the drug problem is one of the really big problems in this country today. Will you give us your views on the penalties that should be imposed on second and third time drug violators.

Judge CARTER. This is a matter of particular concern to me because of the district that I will be sitting in, Mr. Chairman. As you are aware, the enforcement crackdown in south Florida has suddenly in the last 2 years made it very attractive for these people that are involved in drug trafficking for commercial profit to concentrate their effort on what they think is the rural coast, a very long coast of Maine. We are getting a really major play, the enforcement authorities inform me, from this type of traffic.

I would address that question specifically in three parts, first by way of a statement of general principle. I would say that this is a pernicious traffic that is destructive of the elemental values of our society and of our work ethic as a people, and that it must be deterred. Second, as to those people who are convicted of being involved in this traffic on a very large scale for huge profits, commercial motivation, motives of greed, or avarice, I would say that there should be a preference for maximum sentencing of those people, maximum sentences as provided by the Congress to take those people out of that business and serve fair notice on others engaged in that traffic, that the risk is going to be equal to the potential gain for those people.

For second and third offenders, I would have a similar view on sentencing, Mr. Chairman.

The CHAIRMAN. Judge, one of the things that I am most interested in as a member of this committee and as a lawyer and Senator is judiciary activism. There are three branches of Government: legislative, Congress that makes the law; executive, which administers or executes the law; judiciary, which interprets the law. In many cases Federal judges have evidently let the power go to their head, and they feel they are legislative too, and what they have done has been equivalent to that.

I want to get your views as to whether you feel that you will respect the Congress and the laws it makes and leave it to the Congress to make the laws. In some instances I have seen judges take over school districts and even attempt to levy taxes. I have seen them take over institutions of various kinds.

Would you express yourself on judicial activism?

Judge CARTER. Yes, Mr. Chairman. I believe I directed some of my response in the written submission I made to the committee on that subject, and I would be glad to expand on it now.

I think that the first duty of a Federal judge, of any judge, is to apply the statutory law in accordance with the intent of the legislative branch which authorized it, and to apply the Constitution in the context of the intent of the people who framed it, when they framed it, and the authorized interpretations from higher authority of that document.

I believe that I can distinguish between my duty to so apply the law no matter what might be my most passionate wishes with respect to my own personal views of policy goals and social values. And if I were not certain, Mr. Chairman, that I could do so, I would not ask you to confirm this nomination. I believe that that is fundamental to the proper operation of the judiciary. You have my assurance that that will always be uppermost in my mind.

The CHAIRMAN. Another thing that I have seen, some judges embarrass lawyers, witnesses, jurors, and people around the courtroom. I think judicial temperament is very important for a judge. I think there is no excuse for being discourteous.

The judge has all the power. And some of them evidently want to exhibit that power and try to impress people with that power. How do you feel about judicial temperament?

Judge CARTER. I think a judge, Mr. Chairman, that has to do that in order to demonstrate the authority of his position is not a very good judge and in all probability should not be a judge. I have been raised in my professional life in the Federal court primarily in the presence and under the example of Edward T. Gignoux, who is a very gracious, very straightforward, very direct, very honorable man. And I would attempt to emulate him, both in that respect, and also in the respect that he can get a tremendous amount of mileage out of a frank conference in chambers that will serve the same purpose.

The CHAIRMAN. Now, are you willing to work long hours to clean up that docket and keep it that way?

Judge CARTER. I have had to wrestle with that question, and I am willing to assure you that I will do that.

The CHAIRMAN. I think we might confirm you then.

Judge CARTER. Thank you very much, Mr. Chairman.

If I might, I would like to just express my thanks for the record to Senator Cohen and Senator Mitchell for coming here today and speaking so warmly of me. I have always considered them to be very eminent men as well as good friends, and I am deeply grateful to have their recommendation for this nomination.

The **Chairman**. That is fine. But do not forget President Reagan appointed you.

Judge **Carter**. Yes.

The **Chairman**. You are excused now.

Judge **Carter**. Thank you.

The **Chairman**. Mrs. Herrington, come up now please. Hold up your hand and be sworn.

[Whereupon, Mrs. Lois Herrington was duly sworn by the chairman.]

The **Chairman**. Have a seat, Mrs. Herrington.

Mrs. Herrington, would you care to introduce the members of your family and friends.

Mrs. **Herrington**. I am in the same position as the judge before me. Our two daughters are in high school, and they are in the middle of finals. My husband and I decided they had to stay home and do the finals. My husband is here, and I am very proud to introduce my husband, John Herrington.

The **Chairman**. Glad to have you.

Any other friends you would like to introduce?

Mrs. **Herrington**. Well, I have several friends here. I would like to introduce first Ursula Meese and Barbara Jensen, and I would like to introduce her daughter, Marsha Jensen, and Joe Salgado.

There are many other people I would like to introduce, but I will save the time here.

The **Chairman**. We are very pleased to have them here, and thank you.

Ms. Jensen's husband has been nominated to be an Associate Attorney General, and we are polling in this committee now to try to save some time, to try to get him right out. And if the committee would have a meeting soon, we will poll them again to try to get you and Judge Carter out. But we will handle it as expeditiously as we can.

Mrs. **Herrington**. I am happy to hear that.

TESTIMONY OF LOIS HAIGHT HERRINGTON, NOMINEE, ASSISTANT ATTORNEY GENERAL, OFFICE OF JUSTICE ASSISTANCE, RESEARCH, AND STATISTICS

The **Chairman**. Now, I have a few questions that I would like to propound to you.

Mrs. Herrington, what experience do you bring to the Department of Justice that will assist you in serving as an Assistant Attorney General for the Office of Criminal Justice Assistance, Research, and Statistics?

Mrs. **Herrington**. Well, I think I have spent about the last 20 years of my life involved in one way or another in the criminal system, as a deputy probation officer, and of course lastly as Chairman of the President's Task Force on Victims of Crime. I think that has given me a good familiarity with the different variances in the criminal justice system. And also I have been on many committees, and associations that deal also in this area, from domestic violence to juvenile justice. I have a lot of history in the juvenile justice area.

The CHAIRMAN. Mrs. Herrington, it is my understanding that your authority and responsibilities will not in any way alter the statutory authority vested in the head of the Office of Justice Assistance, Research, and Statistics, National Institute of Justice, Bureau of Justice Prevention. The heads of those units will continue to exercise their responsibility for day-to-day programed and grant activities, and you will exercise on behalf of the Attorney General the general authority specified by statute over these units and the general authority and policy control of OJARS, as conferred by the Justice Systems Improvement Act.

Mrs. Herrington, what have you been told concerning your authority? And how do you interpret the meaning of the term "general authority and policy control"?

Mrs. HERRINGTON. Well, Mr. Chairman, as you said, they do remain within the day-to-day authority of the individual bureau heads. Under the authority delegated to me by the Attorney General as Assistant Attorney General, I will have general policy control over the bureau heads. That means managerial control, trying to coordinate them, get them together and organize. And then specific policy control for the Department over OJARS, which will be trying to encourage the thrust that this administration has in violent crime, crime prevention, and victim assistance.

The CHAIRMAN. Mrs. Herrington, are you familiar with the joint State and local organized crime and narcotics programs, known as the multi-State or regional information sharing systems?

Mrs. HERRINGTON. Mr. Chairman, I am familiar with them. I have spent 10 hours of briefing on them. But I cannot say that I know them so well. They are so very difficult. But I have spent a lot of time studying them.

The CHAIRMAN. Mrs. Herrington, will the oversight of these projects fall within your scope of authority, and do you support the concept of the State and Federal Governments maintaining a closer working relationship in the exchange of information relating to organized crime and narcotics?

Mrs. HERRINGTON. Yes, this falls in my authority. And, Mr. Chairman, I do support the concept of the regional sharing system. And we and OJARS will do everything possible to make them work well once this is put in our authority.

The CHAIRMAN. Mrs. Herrington, OJARS is responsible for operating the various sting programs designed to combat criminal activities. Do you believe the sting operations have been cost effective, and what if anything can be done to improve these programs?

Mrs. HERRINGTON. Well, I think they have been very cost effective, Mr. Chairman. For a small amount of money we see tremendous monetary benefits. We have recently seen completion of one project costing forty thousand dollars with a million dollars in benefits. So I think they are very good programs.

As far as improving them, we have some very successful proven programs now. In fact, with new legislation we hope to be able to get this kind of information out to the State and local governments.

The **Chairman**. Mrs. Herrington, what do you see as the major problems facing you in your new position?

Mrs. **Herrington**. Well, first of all, Mr. Chairman, I think it will be having enough time in the day to do everything that needs to be done, and also providing coordination and avoiding the duplication that I see so much within the Federal Government.

The **Chairman**. Is there anything else now that you would like to say to the committee?

Mrs. **Herrington**. I would like to say thank you to you, Mr. Chairman, and also thank you to your fine staff for the time and effort that you have extended on my behalf. I appreciate it very much.

I would like to thank the President very much for having nominated me to this position. And I would like to thank the Senators that spoke before and also acknowledge the fact that Senator Heinz has done an excellent job in the victim area, and he has been part of the solution when few people recognized the problems. So I am very pleased to have their endorsement.

The **Chairman**. Well, we wish you happiness and success in your position, and I feel confident you will have no trouble being confirmed.

Mrs. **Herrington**. Thank you very much.

The **Chairman**. Senator Mathias has a few questions that he wants you to respond to. And I think you could just respond to these questions and send them to the Judiciary Committee.

Mrs. **Herrington**. All right. I would be very happy to do that.

The **Chairman**. Now, if any other Senator has any questions they wish to submit to you, we appreciate your answering those and quickly get them back, so your nomination will not be delayed.

Mrs. **Herrington**. All right.

The **Chairman**. Thank you very much.

I think that completes the hearing today. We will now stand adjourned—I have just been informed that there are two people here who desire to testify on behalf of Mrs. Herrington. So if you will come around to the witness stand.

STATEMENT OF SHARON SAYLES, PRESIDENT, NATIONAL COALITION AGAINST SEXUAL ASSAULT, WASHINGTON, D.C., AND DR. MARLENE A. YOUNG, EXECUTIVE DIRECTOR, NATIONAL ORGANIZATION FOR VICTIM ASSISTANCE, WASHINGTON, D.C.

Ms. **Sayles**. Mr. Chairman.

The **Chairman**. Do you have a written statement, or do you just want to speak?

Ms. **Sayles**. I have a registered statement that I would like to read.

The **Chairman**. Well, ma'am, if it is a long statement, could you put it in the record and just summarize it.

Ms. **Sayles**. It is very brief.

The **Chairman**. All right. If it is very brief, OK.

Both of you might stand up and be sworn.

[Whereupon, Sharon Sayles and Dr. Marlene A. Young were duly sworn by the Chairman.]

Ms. SAYLES. Mr. Chairman, my name is Sharon Sayles, and I am from Minneapolis, Minn. And I am very pleased that I have this opportunity to speak before you. I am here to speak today on behalf of the National Coalition Against Sexual Assault on behalf of Lois Herrington. I represent the National Association of Rape Crisis Centers with members in 35 States and Guam, and we serve over 100,000 victims of rape each year.

We first had a distinct pleasure of working with Mrs. Herrington when she chaired the President's Task Force on Victims of Crime. In that role we believe Mrs. Herrington was acutely aware of the competing interests and rights of both the victims of crime and those who committed the crimes. She made all possible efforts to assist the task force in devising a Senate recommendation to insure balance to the criminal justice system's treatment of these competing rights. Moreover, since becoming Acting Director of the Office of Justice Assistance, Research, and Statistics, she has continued to be willing to listen to those competing interests and respond appropriately. This willingness to listen, to share, and to raise the level of consciousness of the criminal justice system to new heights is in our view the precise attitudes required of the Assistant Attorney General for the Office of Research, Statistics, and Special Projects.

We know the committee is aware of Mrs. Herrington's impressive background as a prosecuting attorney in San Joaquin County, Calif., in the district attorney's office, as well as her work in both the juvenile and adult criminals and victims of interfamily violence. We believe that these diverse experiences have provided her with uniquely knowledgeable perspective on the criminal justice system and the impact on a variety of populations. We are most pleased that President Reagan has chosen to nominate not only a woman, but such an exceptionally qualified woman for this position. We believe this committee, having demonstrated its own sensitivity to the plight for crime victims and the need for restoring the balance, will appreciate the benefits to be derived for having someone of Mrs. Herrington's caliber and perspective in a leadership position with the Department of Justice.

I am pleased to add the name of our organization to an already lengthy list of supporters of Mrs. Herrington.

Thank you.

The CHAIRMAN. Thank you very much. We are very pleased to have you here.

Now, is it Dr. Young?

Dr. YOUNG. Yes, thank you.

The CHAIRMAN. We are very pleased to have you.

Are you an M.D. or Ph. D.?

Dr. YOUNG. Ph. D.

The CHAIRMAN. You may proceed.

Dr. YOUNG. Thank you.

Good afternoon, Mr. Chairman. It is my privilege to be here today to testify on behalf of Mrs. Lois H. Herrington, and I would like to have my written statement entered in the record so that I could summarize it briefly for you now.

This nomination comes at a very propitious time in the country, for crime has been ravaging the Nation for the last 20 years, and we have found no way to stop it. Perhaps one of the reasons is that we have been hesitant to confront its destruction. Instead, we have sanitized the system and given it a face of objectivity designed to look at the offender, his apprehension, his prosecution and fair treatment, and in the process rarely do we look at the depth of the harm the offender has caused his victims. It is a system that seems, in a sense, to protect us all from appreciating our own vulnerability. It is a system or self-delusion that has the effect of compounding all the harm done to victims.

Because of that, we warmly endorse the nomination of Lois Haight Herrington as an Assistant Attorney General. Ever since she was named to be Chairman of the President's Task Force on Victims this last year. Mrs. Herrington has been visible as an ardent national spokesman on behalf of victims of crime.

While many victim advocates were initially skeptical of both Mrs. Herrington and the task force, their fears were soon allayed by the ardency, the energy, and dedication that she brought to that task. She worked tirelessly to absorb the existing knowledge in the field and to structure task force hearings which would accurately reflect the basic concerns of victims as expressed by victims and their allies.

Mrs. Herrington will bring both visibility and dignity to the victims of crime when she takes on the office of Assistant Attorney General. You have heard about her background and its range of experience in both the criminal justice and social services systems, but perhaps what is most impressive to us is her outstanding ability to listen and her insight to the delicate interrelationships between the criminal justice system and the social system.

While we have had little opportunity to see her work as an administrator, there is little doubt that she exhibited extraordinary ability in organizing the task force. Under her strong leadership it was able to effect things in a short period of time.

It is also clear, finally, that her sincerity, articulateness, and personal grace have won her friends in a field which had grown somewhat cynical and suspicious of rhetoric, which failed for much of the rhetoric about "victim rights" has to address the victim's basic needs. Our movement is driven by a passion and compassion generated by a world in which people continue to suffer and die due to criminal attacks by other people. We may not find that we can always make that world just, but we can act so as to alleviate the injustices and the injuries that arise from them.

Within that context, it is indeed my privilege to urge your confirmation of Lois Herrington, a person who has demonstrated her personal commitment to that goal and to creating a new social order founded on liberty and equal justice for all.

Thank you.

The CHAIRMAN. Thank you, Dr. Young. We are very pleased to have you with us.

[The prepared statement of Dr. Young follows:]

PREPARED STATEMENT OF MARLENE A. YOUNG

Good afternoon, Mr. Chairman and members of the Senate Judiciary Committee. It is a privilege to be here to testify on behalf of the nomination of Mrs. Lois Haight Herrington to the position of Assistant Attorney General for Criminal Justice Assistance, Research, and Statistics.

This nomination comes at a propitious time in this country. Crime, which has ravaged this country over the last twenty years, continues its awful onslaught. Our inability to stay its march has been perplexing. We have studied crime, we have studied the criminal, we have invested in armaments, and we have experimented with rehabilitation. Yet crime remains one of the most devasting problems facing the country—draining $75-$125 billion per year from our economy and leaving millions of lives shattered.

Perhaps one reason that we have yet to effectively combat crime is that we so often are afraid to confront its destruction. Traditionally, the criminal justice system has focused on the offender: his apprehension, prosecution, punishment, and rehabilitation. The system has sanitized crime by considering crime's victims and witnesses as no more than pieces of evidence—useful in the identification and prosecution of crime. Crime is more objective and more distant if we avoid the pain, the sorrow, and the deaths it leaves behind—if we ignore the human suffering which is intentionally inflicted by the offender—if we are blind to its misery. Thus, we have structured a system that insures that objectivity. We have remained impervious to the reality of the victim and the reality of our own vulnerability.

Fortunately, over the last decade a new philosophy of justice has emerged, a philosophy which demands more of us all. It calls for an affirmation of the victim, the recognition of his pain, and the establishment of rights and remedies which ensure his fair and compassionate treatment.

At first, there were only a few proponents of such a philosophy. It seemed to rock the very foundations of our system. But gradually individuals became advocates, advocates coalesced, programs were established, and supportive legislation was passed—all reflecting ideas of equal justice for the offender and the victim.

In 1982, the victims' movement truly came of age with recognition from our national leaders of the need to re-examine our priorities of justice. We in the movement owe a debt of gratitude to Senators Heinz and Laxalt—for initiating the Federal Victim and Witness Protection Act and shepharding it through committee—as well as to you, Chairman Thurmond, for serving as floor manager during the bill's final passage. The bipartisan nature of the movement was reflected in similar support from Chairman Peter Rodino and his colleagues on the House Judiciary Committee and the passage of the bill by unanimous consent in both houses.

In addition to this landmark legislation, President Reagan appointed a Task Force on Victims of Crime which issued a final report making some 68 recommendations for victim-oriented changes in the administration of American criminal justice.

It is in light of this new focus that it is so very appropriate that Lois Herrington should be nominated to this position. Since she was named Chairman of the President's Task Force on Victims of Crime, she has been an ardent and consistent national spokesperson for victims. While many victim advocates were at first skeptical of the new chairman and the Task Force, their fears were soon allayed by the energy and dedication Mrs. Herrington brought to the task. She worked tirelessly to absorb the existing knowledge in the field and to structure hearings which would accurately reflect the basic concerns of victims, as presented by victims themselves and their allies.

Confirming a person such as Mrs. Herrington, with a well-known allegiance to the victims' cause as an Assistant Attorney General will give new visibility and dignity to the place of victims within our justice system.

While my organization would respond positively to anyone with Mrs. Herrington's grasp of victim issues, we are especially enthusiastic about her nomination because of her experience and skills. That experience goes beyond the focus of the President's Task Force to a broad exposure to justice and social issues. It also entails a proven capacity for leadership.

We have worked for too long in the fields of criminal justice, health and mental health, and social service, not to realize that victims and justice are ill-served by a narrow focus. To make permanent and lasting changes requires a thorough working knowledge of the dynamics and interrelationship of the traditional justice and social system.

Mrs. Herrington's career has been marked by opportunities to gain such knowledge and she has used them well. Not only did she practice law for ten years prior to joining the Alameda County District Attorney's Office, but she was a member of the Alameda County Women's Coalition on Domestic Violence, the California Sexual Assault Investigators' and District Attorneys' Conference, and Coordinator of the Drug Diversion and Education Program. For her latter service, she received the Outstanding Community Service Commendation of the Concord Police Department.

In addition to this legal background and social involvement, Mrs. Herrington saw another side of the justice system in her early years as a probation officer in San Joaquin County. For her, the idea of social service case work is not a foreign one—she has had first hand experience.

We also know that to make changes in any traditional system requires leadership and administrative skills. While we have not been in a position to get to know Mrs. Herrington as an administrator, there is little doubt that Mrs. Herrington exhibited extraordinary organizational talent in her work on the President's Task Force. Without her strong leadership, it is questionable whether the Task Force would have been able to accomplish as much in so short a time.

Finally, it is clear that her sincerity, articulateness, and personal grace have won her friends in a field which had grown somewhat cynical and suspicious of rhetoric decrying the plight of victims but which failed to be supported by advocacy to address the victims' basic needs.

Our movement is driven by a passion and compassion generated by a world in which people continue to suffer and die due to criminal attacks by other people. We are dedicated to notions of freedom and justice attached to truth. We may find that we cannot always make this world just, but we can act so as to alleviate the injuries arising from injustice. Within that context, it is our privilege to urge your confirmation of Lois Haight Herrington—a person who has demonstrated her personal commitment to that cause and to creating a new social order founded on liberty and equal justice for all.

The CHAIRMAN. I believe that completes the testimony. I regret I didn't know you two ladies were here, I understood you were not going to be here. And I am pleased you could testify. And I am certain that your statements will be given very careful consideration by the committee.

Thank you.

[Whereupon, at 2:58 p.m., the committee recessed, to reconvene subject to the call of the Chair.]

BIOGRAPHIES

GENE CARTER

NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF MAINE

Birth: November 1, 1935, Milbridge, Maine.

Legal residence: Maine.

Marital status: Married to Judith A. Kittredge Carter, 2 children.

Education: 1954-1958—University of Maine, B.A. degree; 1958-1961—New York University School of Law, LL.B. degree.

Bar: 1962—Maine.

Military service: 1961-1968—U.S. Army Reserve.

Experience: 1961-1962—Law Clerk to Hon. J. Spencer Bell, U.S. Court of Appeals, Fourth Circuit; 1963-1965—Private practice; 1965-1980—Rudman, Rudman & Carter, partner; 1980-present—Associate justice, Maine Supreme Judicial Court.

LOIS HAIGHT HERRINGTON

NOMINEE, ASSISTANT ATTORNEY GENERAL, OFFICE OF JUSTICE ASSISTANCE, RESEARCH AND STATISTICS, DOJ

Mrs. Herrington is an attorney at law and served as Chairman of the President's Task Force on Victims of Crime which issued its final report in January, 1983.

Mrs. Herrington was born in Seattle, Washington on December 6, 1939, and graduated from San Mateo High School, San Mateo, California in 1957. She is a graduate of the University of California, Davis where she received her A.B. degree with honors in Political Science in 1961. Mrs. Herrington received her LL.B. and J.D. degrees at the University of California, Hastings College of the Law, San Francisco, California in 1965. Mrs. Herrington practiced law for ten years as a private attorney before joining the Alameda County District Attorney's Office in Oakland, California as a Deputy Attorney in 1976.

Mrs. Herrington has served as a member of the Alameda County Women's Coalition on Domestic Violence, a member of the California Sexual Assault Investigator and District Attorney's Conference, a coordinator for Probation and Courts for domestic violence diversion programs, a participant in the National Juvenile Conference of Juvenile Justice and Judge's Seminars, a Coordinator of the Drug Diversion and Education Program where she received the outstanding Community Service Commendation awarded by the Concord Policy Department, and was a member of the Contra Costa County Child Development Council. In addition, Mrs. Herrington has had advanced studies in psychology at the University of California, has served as a senior vocational counselor at Pacifica High School in Pittsburg, California, has been a member of the Citizens Coordinating Committee for the City of Walnut Creek, a member of the Drug Education Training Program in the Orinda School District, a representative to the American Field Service Selection Committee, and a Senior Advisor to the Bay Area Chapter of the U.S.O. In addition, Mrs. Herrington has been employed as a Senior Girls Counselor at the city and county of San Francisco Juvenile Hall, and has worked as a probation officer in San Joauqin County, California.

Mrs. Herrington's professional associations include the American Bar Association, the California Bar Association, the Alameda County Bar Association, the California District Attorney's Association, the Queen's Bench Association, and the Hastings Law School Alumni Association.

Mrs. Herrington is married and resides in McLean, Virginia. She and her husband have two daughters, Lisa Marie (age 17) and Victoria Jean (age 15), currently enrolled in local public high school.

CONFIRMATION HEARING ON:

HECTOR M. LAFFITTE AND FRANCIS M. MULLEN

WEDNESDAY, JUNE 15, 1983

U.S. Senate,
Committee on the Judiciary,
Washington, D.C.

The committee met, pursuant to notice, at 2:10 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Also present: Senators Biden, Metzenbaum, Kennedy, Denton, Hatch, and Mathias.

Staff present: Duke Short, chief investigator; Allan Spence, investigator, and Mary Speed Farmer, investigative clerk; John P. Flannery, special counsel, and Deborah Dahl, legal assistant, Committee on Labor and Human Resources.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The Chairman. The committee will come to order.

Today, we are considering the nominations of Hector M. Laffitte of Puerto Rico, to be U.S. district judge for the District of Puerto Rico and also, Francis M. Mullen, of Virginia, to be Administrator, Drug Enforcement Administration.

So, if you will come around, Mr. Laffitte, and please stand and be sworn.

Do you swear that the testimony you will give in this hearing will be truth, the whole truth, and nothing but the truth, so help you, God?

Mr. Laffitte. I do.

The Chairman. Would you like to introduce any members of your family or friends who are here?

Mr. Laffitte. Yes, Senator. It is a pleasure to introduce my wife, Lydia.

The Chairman. We are very pleased to have you with us. He did like I did—he married a young, pretty lady. [Laughter.]

Now, Congressman Corrada, would you like to make a statement at this time?

Mr. Corrada. Yes, Senator.

STATEMENT OF HON. BALTASAR CORRADA, A U.S. REPRESENTATIVE FROM THE COMMONWEALTH OF PUERTO RICO

Mr. CORRADA. Chairman Thurmond and members of the committee, my name is Baltasar Corrada, Resident Commissioner of Puerto Rico and as such, Puerto Rico's sole elected Representative in Congress.

It is with a deep sense of personal satisfaction that I appear before you today to support President Reagan's nomination of my good friend, Hector M. Laffitte, to be the U.S. district court judge for the District of Puerto Rico. Mr. Laffitte, in my opinion, is eminently qualified for the position for which he has been nominated.

I have been personally acquainted with him for more than 30 years. I first met him when both of us were high school students in Ponce, P.R.; later, as a member of the legal community in Puerto Rico, I had the opportunity to observe his high standards of professionalism and unyielding dedication to the ends of justice.

Mr. Laffitte's unquestionable personal integrity, excellent moral character and highly competent legal mind have earned him the esteem and respect of his colleagues and the Puerto Rican community. We both served together for more than 2 years, between 1969 and 1972 on the Commonwealth of Puerto Rico's Civil Rights Commission, where I was able to ascertain his high caliber as a constitutional, corporate, and labor lawyer. In his 24 years in the private practice of law, he has built a solid reputation as an outstanding trial lawyer and learned jurist. Mr. Laffitte's uncommon intellectual resources, coupled with a bachelor of law degree from the University of Puerto Rico Law School in 1958 and a master's degree in labor law from Georgetown University, led him to be recognized as one of our best lawyers on the island.

I believe he possesses the intellectual capacity, dedication, and unbiased and dispassionate frame of mind which will allow him to excel in his new position on the bench.

It is a pleasure for me to introduce to you and to recommend a well-rounded candiate like Hector M. Laffitte, who believes in judicial independence and fully understands the enormous responsibility a position on the Federal Bench entails. I commend President Reagan for his wisdom in selecting such an outstanding Puerto Rican, who will surely reflect upon our judicial system.

Thank you, Mr Chairman, and members of the committee.

The CHAIRMAN. Thank you very much. We are very pleased to have you with us, and your high endorsement of Mr. Laffitte will certainly carry great weight with the committee.

Mr. CORRADA. Thank you.

The CHAIRMAN. Now, Mr. Laffitte, I have a few questions I would like to propound to you, and then we will pass on to the other members of the committee in case they have any questions.

TESTIMONY OF HECTOR M. LAFFITTE, NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF PUERTO RICO

The CHAIRMAN. You have been a practicing attorney since 1959, I believe.

Mr. LAFFITTE. Yes, sir.

The CHAIRMAN. And you have now been nominated for the position of U.S. district court judge by President Reagan.

What do you feel would be the most rewarding aspect of serving in this capacity?

Mr. LAFFITTE. Sir, I think that the most rewarding aspect of entering public service and entering the judicial branch of Government would be the opportunity to engage in the highest mission of dispensing justice for all.

The CHAIRMAN. Mr. Laffitte, I believe judicial temperament to be a prerequisite for a good Federal judge. Would you give me your thoughts on this subject? Now, the reason I say that is that I have been in some courtrooms when I was practicing law, and I have seen Federal judges embarrass attorneys, witnesses, and jurors unnecessarily, and I thought it was inexcusable then, and I think so now. So, would you give us your views?

Mr. LAFFITTE. Yes, sir. As a matter of fact, as a trial attorney, I myself have experienced the same things as the Senator has just stated. It is my impression and my opinion that judicial temperament embodies tolerance, patience, objectivity, sensitivity, compassion, industry, and a high commitment to the principle of equal justice under the law.

The CHAIRMAN. Now, Mr. Laffitte, do you feel that a district court judge should assume direct control over complex issues and cases in order to avoid delays and to effectively manage such cases?

Mr. LAFFITTE. Senator, I believe that a judge should not unduly intervene or try to handle or try the cases for the attorneys. I think that the attorneys should try the cases in the manner that they best see fit, and that the judge should steer the proceedings thoroughly, but firmly. In that fashion, we will expedite the proceedings in court.

The CHAIRMAN. I want to ask you a question on judicial activism. We have three branches of Government: the Congress, which makes the laws; the President, who administers the laws, and the courts, that interpret the laws. But there have been many judges on occasions who have seemed to feel it their duty to write the law.

Now, I believe in your statement you said:

> On some occasions, courts have gone beyond their proper functions of applying constitutional principles to specific facts and have become involved in administering school systems, jails, mental institutions and other public agencies. These are areas where the courts should be very cautious in exercising jurisdiction.

I was very pleased to see you make that statement. Now, what are the standards that you would use in deciding that your court had a continuing administrative responsibility to oversee the implementation of one of its orders?

Mr. LAFFITTE. Well, first of all, Senator, I strongly feel that the business of governing is not the business of our judiciary; that is for the legislative and the executive. A court should not infringe upon the functions of the other branches of Government, and the running or supervising of school systems, of institutions, either public or private, is not consonant with the proper function of our courts. Therefore, the courts should exercise great judicial restraint in approaching these matters, to avoid needless friction between the executive, the legislature and the judiciary.

The CHAIRMAN. The distinguished Senator from Maryland.

Senator MATHIAS. Thank you, Mr. Chairman.

Mr. Laffitte, first of all, let me congratulate you on your nomination by the President of the United States to be a U.S. judge.

I assume that you are bilingual.

Mr. LAFFITTE. Yes, sir.

Senator MATHIAS. How do you conduct judicial proceedings in Puerto Rico as far as language is concerned?

Mr. LAFFITTE. Well, in the Commonwealth courts, of course, the language is in Spanish. In the Federal courts and in the Federal administrative agencies, the proceedings are conducted in English. There is an interpreter or translator wbo will translate into the record into Spanish for those parties or persons who do not have a command of the English language.

Senator MATHIAS. So that, if a party to a proceeding, whether it is criminal or civil, is only competent in a single language, then it is done by interpreters, but the main proceedings are in English.

Mr. LAFFITTE. In English, yes, sir. In criminal cases, defendants are allowed to wear microphones, and there is simultaneous translation. This is not so with civil cases, because then you have the interpreter.

Senator MATHIAS. And, in your mind, does that adequately protect all the parties?

Mr. LAFFITTE. Absolutely, and the courts have dealt with the issues and with the problems, and they have said that that satisfies due process, as there is the interpreter there to translate for the defendant or the parties or whoever does not have a command of the language.

Senator MATHIAS. Of course, normally, a U.S. judge is dealing with U.S. statute law, but there are occasions when the local law must be applied. Now, is that the civil law?

Mr. LAFFITTE. Yes, sir. As you know, the Supreme Court ruled in diversity cases, the law to be applied is the law of the State; in Puerto Rico, it would be the law of the Commonwealth. And of course, then, we have a civil jurisdiction which is in a way also, I would say, affected by the common law, and we have a very special situation in Puerto Rico, but normally, basically, it is civil.

Senator MATHIAS. So that you really have to apply the common law as it is handed down by the Supreme Court and by the circuit courts of appeals throughout the United States, but you also have to take account of the civil law that is part of the Spanish heritage?

Mr. LAFFITTE. Yes, sir, in diversity cases.

Senator MATHIAS. In diversity cases.

Mr. LAFFITTE. There are situations where it is only the Federal law that is applicable.

Senator MATHIAS. So that you have to be a master not only of the common law but of the civil law?

Mr. LAFFITTE. Yes, sir, that is correct. We have to be able to handle both systems.

Senator MATHIAS. And you feel confident of your own competence in both systems of law?

Mr. LAFFITTE. Yes, sir.

Senator MATHIAS. Well, I take my hat off to you.

Mr. LAFFITTE. Thank you, Senator.

Senator **Mathias**. Thank you very much, Mr. Chairman.

The **Chairman**. The distinguished Senator from Utah.

Senator **Hatch**. We are very happy to welcome you to our committee and congratulate you on your nomination by the President. I have no questions of you that have not been covered either in writing or orally here today.

Mr. **Laffitte**. Thank you, Senator.

The **Chairman**. Thank you.

Mr. Lafitte, I see the able and distinguished Senator from Virginia, Senator Warner, has come in, and you have two more witnesses who want to testify in your behalf, but these Senators are so busy around here, if you will excuse us a few minutes, I will call on Senator Warner and let him make his statement on behalf of Mr. Mullen. I presume that is the reason he is here.

So if you will just have a seat back there and let Mr. Mullen come up here with Senator Warner.

Senator Warner, we are glad to have you with us.

STATEMENT OF HON. JOHN W. WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator **Warner**. Thank you very much, Mr. Chairman and members of the committee. It is a privilege for me to appear today on behalf of this distinguished American. The President has chosen to nominate him to be the Administrator of the Drug Enforcement Administration. Mr. Mullen has an outstanding record of achievement in law enforcement and is, in my opinion, well-qualified for this position.

Born in Connecticut and educated at Mitchell College and Central Connecticut State College, he joined the Federal Bureau of Investigation in 1962 after service in the U.S. Air Force and with the New London Police Department. Mr. Mullen has served with distinction at the FBI and rose from agent to one of the three top management positions in the Bureau, Executive Assistant Director of Investigations. Since 1981, he has been Acting Administrator of the Drug Enforcement Administration.

During his tenure as Acting Administrator, the efforts of the Drug Enforcement Administration have increased, and many new programs have been undertaken with very successful results. As an example, there has been a dramatic increase in the number of cooperative drug cases investigated jointly by the DEA and FBI.

In July 1981, there were 12 joint cases; in June 1983, there were approximately 450 joint investigations, and I would note that the domestic enforcement program arrested 12,897 violators in 1981, the largest yearly total since 1977. 1982 arrests totalled 12,640, of which 2,122 were major violators.

The nominee is married, and he and his wife, Nancy, have three children.

I believe your family is here today.

Mr. **Mullen**. Yes, they are, Senator.

Senator **Warner**. Mr. Chairman, if we may, we would like to introduce the nominee's family.

The CHAIRMAN. We are very pleased to have you, Mr. Mullen. Please introduce your family and your friends, if you have any present.

Mr. MULLEN. Senator, my wife, Nancy, has accompanied me today and sits right behind me. Next to her is my daughter, Pamela. Next to her is Mrs. Virginia Long, the wife of my Deputy Administrator; and next to her is my secretary, Kathy Aldren.

The CHAIRMAN. We are very pleased to have all of you here today.

Senator WARNER. Mr. Chairman, this is a very important post, and that concludes my remarks.

The CHAIRMAN. Well, Mr. Mullen, one of the finest men in the Senate has come and highly recommended you, so I want to compliment you on your friendship with him.

Mr. MULLEN. Thank you very much, Senator.

The CHAIRMAN. We will excuse you now and bring Mr. Laffitte back to finish up. I believe he has two friends here who want to say a word, the Honorable Raphael Capo—would you come around—and the Honorable Jack Marquez.

Would you both hold up your hands and be sworn?

Do you swear the testimony you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CAPO. I do.

Mr. MARQUEZ. I do.

The CHAIRMAN. You may proceed.

STATEMENT OF RAFAEL CAPO, DEPUTY GENERAL COUNSEL, EXPORT-IMPORT BANK OF THE UNITED STATES

Mr. CAPO. Mr. Chairman, for the record, my name is Rafael Capo and I work as Deputy General Counsel of the Export-Import Bank of the United States. For the last 2 years, I was Deputy Legal Counsel to the Vice President of the United States, Hon. George Bush, and as such, was very intimately involved with the process of nomination of Federal judges for Puerto Rico.

I personally know Mr. Hector Laffitte, and I commend the President for this magnificent nomination. I cannot think of a better practicing lawyer from Puerto Rico who can fill this most honorable and prestigious position, and I wholeheartedly commend the President for this excellent nomination.

Thank you.

The CHAIRMAN. I assume you think highly of him.

Mr. CAPO. Very highly, Senator.

The CHAIRMAN. All right. We would be glad to hear from you, Mr. Marquez.

STATEMENT OF JACK MARQUEZ, ATTORNEY AT LAW

Mr. MARQUEZ. Mr. Chairman, it is a pleasure to be here to express my support for the nomination of Hector Laffitte to be U.S. district judge for the District of Puerto Rico.

I am a practicing attorney, although I have held several jobs here in government, both Commonwealth and Federal. I have been an attorney. I have been a member of the bar of Puerto Rico since

1967. I have known Mr. Laffitte since about that time, when both of us practiced labor law in Puerto Rico.

I wholly subscribe to the statements made earlier by Mr. Corrada and by Mr. Capo, now, that Mr. Laffitte is indeed extremely well-qualified to be a Federal Judge of the Federal District Court for Puerto Rico. I understand that he was rated as highly qualified unanimously by the ABA, which in itself is a significant distinction. I have known him personally, and I believe that he is very well-endowed with the character, the judicial demeanor necessary to become an excellent judge of the bench.

Thank you.

The CHAIRMAN. Thank you.

The distinguished Senator from Maryland.

Senator MATHIAS. No questions, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Utah.

Senator HATCH. No questions, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Alabama.

Senator DENTON. No questions, Mr Chairman.

The CHAIRMAN. Well, I believe that is all, and that completes the testimony here.

Mr. Laffitte, is there anything else you wanted to say to the committee before you leave?

Mr. LAFFITTE. Senator, the only thing I want to express to the committee is my thanks, my deepest thanks, for the opportunity to appear before this honorable committee.

Thank you.

The CHAIRMAN. Now I would like to put in the record a letter from Luis Ferre, former Governor of Puerto Rico, praising you highly.

[The letter referred to follows:]

Luis A. Ferré
G.P.O. Box 4487
San Juan, Puerto Rico 00936

Ferré
Puerto Rico

1983 JUN 10 PM 5 27

June 6, 1983

The Honorable Strom Thurmond
Senator
United States Senate
Washington, D. C. 20510

Dear Senator Thurmond:

As former Governor of Puerto Rico and acting Chairman of the Republican Party of Puerto Rico, it is an honor for me to address you today concerning the nomination of Mr. Héctor Laffitte to the United States District Court for the District of Puerto Rico.

Because I am unable to travel to Washington, D. C. at this time to attend the confirmation hearings for Mr. Laffitte, I ask that my letter be included in the record.

It is without any hesitation that I lend my full support and endorsement to Héctor Laffitte. He has served Puerto Rico honorably for over thirty years and has earned the reputation within our community as a man of unimpeachable personal integrity, moral soundness and most important - common sense.

I am well pleased and honored to recommend Héctor Laffitte to you as a man morally, philosophically, and intellectually well-suited for the important public trust which is associated with such an appointment for which he is now being considered for.

With my very best wishes.

Sincerely,

Luis A. Ferré

The CHAIRMAN. Well, we hope you have a long, happy, and successful tenure on the Federal bench in Puerto Rico.

Mr. LAFFITTE. Thank you, Senator.

The CHAIRMAN. You and your witnesses are now excused. You may stay around if you wish.

Mr. Mullen, you have not yet been sworn, have you?

Mr. MULLEN. No, Senator.

The CHAIRMAN. Please raise your hand. Do you swear the testimony you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MULLEN. I do.

The CHAIRMAN. Have a seat, Mr. Mullen.

TESTIMONY OF FRANCIS M. MULLEN, NOMINEE, ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION, DEPARTMENT OF JUSTICE

The CHAIRMAN. In order that we can give proper opportunities here to the various Senators, we will each take about 15 minutes or less, in other words, limit each Senator to 15 minutes, and then we will have a second round and keep going until we get through.

Mr. Mullen, I have a few questions here that I wish to propound to you. I understand that you have prepared a DEA Assessment of Drug Trafficking. Would you very briefly highlight that document for the committee?

Mr. MULLEN. I am pleased to do that, Mr. Chairman. Before I do, I do want to thank you for giving me the opportunity to appear before your committee and to thank Senator Warner for introducing me. I am very proud to be the President's nominee for Administrator of the DEA, and since I have been at DEA, I have found a core of dedicated, capable employees, and I am just as proud to be leading them as I have of my 22 years of service with the FBI.

With regard to our current assessment of the drug situation or the drug abuse situation from the perspective of DEA, we normally divide the drug programs into four areas, the first being heroin. We find at this time approximately one-half million heroin addicts in the United States, consuming about 4.4 metric tons of heroin. The main source—well, there are three main source areas for heroin, the first being Southwest Asia, from where we get approximately 52 percent of the heroin; the next is Southeast Asia, from where we get about 15 percent, and the rest coming from Mexico.

We have been hit with an unusual phenomenon at this time, and that is that we are getting heroin from all three source areas. In the past, we would find a situation whereby there would be a drought in one area or effective enforcement in another, and we would not be getting an ample supply from all areas. But at this time, we are being overwhelmed, in effect, with heroin—although in 1982, we seized twice as much heroin as we did in 1981, we still find supplies abundant, injuries and overdose deaths on the increase, and the heroin situation remains critical.

The next area is that of cocaine, and we estimate that approximately 15 million Americans have used cocaine, and about 6.75 million of those using it at least 30 times per year. With regard to cocaine, we find that Colombia is the main source of supply, supplying about 75 percent of the cocaine consumed. Peru and Bolivia are also source countries.

We expect with regard to cocaine, abuse will remain relatively high, again because of abundant supplies. In 1982, from the enforcement perspective, we seized about three times as much cocaine as we did in 1981, so we have had some effective law enforcement, but supplies remain abundant.

A third area is that of marihuana, and here, we estimate that about 25 million Americans use marihuana. The main source, again, is Colombia, with DEA estimating that over half of the marihuana coming into the United States is from Colombia. We are also receiving abundant supplies from Jamaica, and a new phenomenon in this area, the DEA estimates that about 20 percent of the marihuana consumed in the United States is being grown domestically.

The fourth area of concern is that of dangerous drugs. These would be depressants, stimulants, hallucinogens and narcotics. Here, we do not have an estimate of the number of abusers, so much activity comes from the diversion of drugs from licit areas, and much of it from prescriptions, illicit in some cases, and it is very difficult to estimate the number of abusers in this area.

We do have a serious drug problem; there is no question about that. I believe, and many others have stated, including the President and the Attorney General, that the drug abuse problem is the No. 1 crime problem that we have in the United States today. We are making progress. We have seen, for example, a decline in marihuana abuse on the part of high school use for the third straight year. We have seen a decline between 1981 and 1982 in the cocaine abuse on the part of our young people.

A real success story is that of methaqualone, where we were simply overwhelmed with this particular drug, a depressant, and through international cooperation and effective law enforcement, we were able to reduce the supply of methaqualone to the point where injuries and overdose deaths have declined by 50 percent.

That, generally, Mr. Chairman, is a DEA assessment of the drug problem as we see it at present.

The CHAIRMAN. Mr. Mullen, this appears to be a very informative document, and without objection, we will place it in the record.

Mr. MULLEN. Thank you, Mr. Chairman.

[The DEA document referred to follows:]

ASSESSMENT OF DRUG TRAFFICKING

Presented to the
United States Senate
Judiciary Committee

June 15, 1983

Confirmation Hearing
of
Francis M. Mullen, Jr.
Acting Administrator
Drug Enforcement Administration

INTRODUCTION

There is recent evidence that certain elements of drug abuse in the U. S. have abated somewhat: marihuana use among teenagers appears to be down slightly, the sharp increase in PCP abuse experienced during the past decade is tapering off, and there has been a significant reduction in abuse of methaqualone in the past year. However, optimism over these specific positive trends must be tempered by the hard realization that the seriousness of the drug abuse problem overall remains and drug abuse levels remain unacceptably high.

National trends project that major drugs of abuse will continue to be abundant at least through 1985, and drug abuse problems will remain as long as there is a world glut in narcotics and dangerous drugs.

Drug trafficking is the most serious crime problem confronting America today. It is inextricably tied to organized crime, which seeks to exploit the more vulnerable in our population through patterns of violence, public corruption, and illegal profiteering that combine to threaten each person and institution in our society. It is a particularly difficult problem because these organizations are secretive, self-perpetuating criminal enterprises whose vast financial resources and involvement in a myriad of business activities -- both legitimate and illegitimate -- make them less susceptible to penetration by law enforcement.

The goal of DEA is to stabilize and then minimize the drug problem by vigorous law enforcement actions designed to disrupt criminal drug trafficking organizations. Through the apprehension, conviction, and punishment of drug traffickers, through the removal of their drugs from the illegal market, and through assuring the forfeiture of their accumulated profits and proceeds, DEA seeks to immobilize this world-wide criminal enterprise. In combination with strong drug abuse prevention and education efforts and a committed international narcotics control program, drug law enforcement can have a significant impact on reducing drug abuse and the crime, violence, and corruption associated with it.

It is in pursuit of this goal that the 1982 Federal Strategy for Prevention of Drug Abuse and Drug Trafficking and the activities of DEA are directed. It is important to understand the many dimensions of the current drug production and trafficking situation in order to place DEA's specific programs and efforts in context.

ASSESSMENT OF THE DRUG TRAFFICKING SITUATION

HEROIN

The increase in heroin availability and abuse in the United States is largely attributable to the continued availability of heroin from all three source areas. Southeast Asian heroin has a 10 percent share of the national market. An influx of higher-purity Mexican heroin provides about 36 percent of the heroin in the United States. Mexico continues to provide the majority of the heroin in the midwest and west. Southwest Asian heroin continues to account for more than half of the United States heroin supply, and tends to be dominant in the eastern part of the country.

Iran, Afghanistan, and Pakistan are the major producers of opium in Southwest Asia, with the majority originating in Pakistan and moving overland through Europe to the United States. Southeast Asian heroin from the Golden Triangle (Burma, Thailand, and Laos) enters the United States primarily on a direct route from Thailand to the western states. Mexican heroin continues to enter the United States overland.

Heroin will remain available for the foreseeable future because of extensive opium cultivation and expanding heroin conversion capabilities. Southwest Asian producers have ample opium stockpiles that assure a sustained supply. The prospect for effective suppression in Iran and Afghanistan is not good because of their critical domestic problems. Record opium harvests in the Golden Triangle of Southeast Asia may motivate traffickers in that area to accelerate their production and trafficking activities. Finally, Mexico's current economic distress may tend to induce more people to assume greater risks in cultivating opium and smuggling heroin across the United ~~States~~' border, working in opposition to the Mexican government's opium eradication efforts.

COCAINE

Colombia is the principal processor of cocaine hydrochloride in South America, and provides the majority of the cocaine sold in the United States. Bolivia and Peru are the most important sources of coca leaf. Colombian cocaine reaches the United States by a variety of means, most notably vessel and private aircraft entering Florida.

Cocaine availability and abuse are expected to continue in the United States because of several factors: the high profit margin realized by drug traffickers, coca cultivation is expanding, sophistication in smuggling techniques, the presence of highly organized Colombian trafficking networks, and the fact that there is broad geographic and sociological appeal for cocaine in this country. The negative health consequences attendant with cocaine abuse are expected to become more severe and apparent as an alternative dangerous means of administering the drug, such as "freebasing" and "speedballing", become more popular. Enforcement efforts in South Florida may be expected to continue to influence the use of alternative trafficking routes.

AMPHETAMINE

The primary source of illicit methamphetamine in this country remains domestic clandestine laboratories, augmented by some smuggling from Mexico. DEA intelligence indicates heavy trafficking of methamphetamine by motorcycle groups, both in the west and in other parts of the United States. In addition, various motorcycle gangs control virtually all illicit manufacture and distribution in Texas, where one-third of the clandestine laboratory seizures were made in 1982. Most of these Texas gangs maintain links in other states and in Canada.

METHAQUALONE

Vigorous diplomatic efforts aimed at curtailing the diversion of bulk methaqualone from legitimate international commerce have caused a reduction in methaqualone availability and abuse in the United States. In addition, enforcement activities have resulted in numerous major seizures of this drug, arrests of high-level traffickers, and seizures of several clandestine laboratories.

The primary source of counterfeit Quaalude tablets is clandestine tableting operations located in South America and Mexico, which utilize bulk powder diverted from a variety of sources worldwide. Diversion from domestic sources -- including "stress clinics" and other means of prescription fraud -- account for a much smaller but significant portion of the illicit supply. Methaqualone is trafficked primarily from Colombia to Florida, where smuggling of the drug is frequently carried out by cocaine and marihuana trafficking organizations.

International cooperative efforts should continue to restrict the supply of bulk methaqualone to the illicit market for subsequent distribution in the United States. The People's Republic of China, which had recently been a major source of bulk methaqualone powder, has agreed to place restrictions on the export, sale, and distribution of methaqualone powder, further limiting traffickers' access to the raw material. As the supply of methaqualone declines, however, trafficking in counterfeit methaqualone, containing dangerous amounts of diazepam (Valium) and other substances, will continue to increase.

OTHER DANGEROUS DRUGS

The abuse of non-amphetamine stimulants such as Preludin and Ritalin, and anorectic drugs such as phendimetrazine is increasing gradually. These substances reach the illicit market primarily through prescription fraud, theft, and other forms of diversion. There is some evidence that certain stimulants are being smuggled into the United States from Canada. There is also evidence that phenyl-2-propanol (P2P), a methamphetamine precursor in Schedule II of the Controlled Substances Act, is being smuggled from Canada by motorcycle gang trafficking groups.

Abuse of barbiturates is declining. For the most part, abused barbiturates are legitimately manufactured or smuggled into the United States; there is little clandestine manufacturing. The decline in barbiturate use in recent years is most likely a consequence of Controlled Substance Act rescheduling actions, public awareness of the dangers of barbiturate use, and the availability of other depressants, such as methaqualone and diazepam. Although diazepam, a non-barbiturate sedative, has consistently had the most frequent incidence of reported abuse, in 50 percent of abuse episodes the source for the diazepam was legal prescriptions. The balance of abuse episodes was accounted for by diversion from licit channels, an activity that is expected to continue because the relatively low price of diazepam tablets.

During the last three years, the widespread use of pharmaceutical narcotic substitutes for heroin has become common among heroin users and addicts in some cities. The combination of Talwin (an analgesic) and Pyribenzamine (an antihistamine) under the street name "T's and Blues", appears to be supplanting heroin in some cities. Through a cooperative effort involving the manufacturer of Talwin, the Food and Drug Administration and DEA, a new Talwin formulation has been introduced which may prove to be less susceptible to abuse than the earlier form. Additionally, during the past year a codeine and glutethimide combination has been reported under the street name "Fours and Doors". Also, Dilaudid abuse in the United States has increased substantially in the last two years.

During the past several years, the wholesale vending of "look-alike" drugs has become a major drug abuse problem. Look-alikes are tablets or capsules that are manufactured to resemble controlled substances, but that contain non-controlled over-the-counter drugs. The user who consistently ingests five or six of these pills is exposed to great danger when he inadvertently does the same thing with real controlled drugs such as amphetamine. In addition, incidents of overdosing on look-alikes have been reported.

MARIHUANA

Despite a continuation of the decline in popularity among high school students, marihuana availability and abuse continue to be widespread nationally.

Colombia continues to be the major cultivator and exporter of marihuana to the United States, and despite high levels of enforcement pressure in the Caribbean area, Colombia is expected to continue to supply about one-half of the marihuana consumed in the United States. Marihuana is smuggled in multi-ton shipments by vessel and by private general aviation aircraft.

Colombian marihuana smuggling is highly organized. A few large multi-drug organizations operating in the northern coastal cities of Colombia arrange and supervise most of the smuggling operations. These organizations deal easily in multi-ton quantities and often work together to arrange large deliveries to the United States, where their American members control off-loading and distribution.

Following Colombia, Mexico and Jamaica are the major exporters of marihuana to the United States. Due to the success of the Mexican Government's vigorous eradication campaign, which has been in effect since 1976, Mexico's share of the overall United States' marihuana market has declined steadily in the past several years. By contrast, Jamaica is becoming a more important source country.

DOMESTIC MARIHUANA PRODUCTION

Drug law enforcement in the United States is facing a new challenge: the cultivation of cannabis within our own borders. As enhanced crop control and enforcement efforts directed at foreign sourced marihuana took hold, United

States' users began to look for other sources. This situation has led to cannabis cultivation for commercial purposes in almost every state. Sinsemilla marihuana, an expensive and generally potent variety first produced domestically in Hawaii and California, is now being grown in other states and is available around the country.

State and local authorities reported to DEA that they destroyed in excess of 2.5 million cannabis plants during the 1982 season. Based on accepted estimates for domestic marihuana production in 1981, it appears that more cannabis was eradicated in 1982 than was previously believed to exist.

Cultivation in the United States appears to be generally unorganized and diverse; growers range from former moonshiners to unemployed lumberjacks, from legitimate farmers to the individual user growing his own supply. Generally, growers produce and sell independently. Certain outlaw motorcycle gangs are involved in the domestic marihuana traffic, but at this time we have not seen a single group in control of a significant part of this market. There have been incidents of violence associated with domestic production between growers and thieves, between growers and law enforcement officers, and against innocent citizens.

ORGANIZED CRIM

Worldwide drug trafficking enterprises have become increasingly organized and sophisticated. Organized crime has found in the illicit drug trade a vehicle for perpetuating and enhancing its wide range of lucrative criminal activities.

In Fiscal Year 1982, DEA arrested 1,337 individuals occupying positions in the drug distribution hierarchy at the very highest levels, including heads of criminal organizations and financiers. This is still a small percentage of the leading figures behind the billions of dollars in retail drug sales in the United States each year. Drug trafficking and the myriad of other crimes associated with it have a devastating effect on our society and economy.

Organized criminal groups are involved across the whole drug trafficking spectrum. They obtain illicit substances overseas, arrange for importation into the United States, and establish elaborate enterprises for cutting the imported drugs and distributing them throughout the country. Drug money is laundered through seemingly legitimate businesses specifically set up as "fronts" for drug dealers. Profits are reinvested in the drug business much like in legitimate corporate enterprises. Profits from drug trafficking are also being invested in legitimate businesses.

In the United States, there are numerous complex criminal organizations associated with each other in what is variously known as the Mafia, Syndicate, or La Cosa Nostra. These organized crime "families" are bound together by blood, tradition, and philosophy. The popular notion that these traditional organized crime families are not involved in the drug traffic is not true. Many traditional organized crime groups are involved in drug trafficking in one way or another, and many operate extensive, sophisticated, and powerful drug trafficking networks.

The problem of organized crime today is not limited to traditional organized crime. In the past twenty years, law enforcement has witnessed the emergence of new organized criminal enterprises dealing not only in drugs, but also in other criminal activities traditionally controlled by the "Syndicate".

Over the past decade, hundreds of chapters of outlaw motorcycle gangs have developed around the United States and in foreign countries. Prison gangs, first established as a result of associations developed in the California prison system, today operate both inside and outside prison, and are spreading across the country. Other emerging organizations, such as Southeast Asian groups, the violent Colombian groups known as "Cocaine Cowboys", the "Dixie Mafia" and others derive their primary source of revenue from drug trafficking.

The involvement of organized crime with the illegal drug trade is only part of the problem. Organized groups of criminals assault and murder, not only each other, but innocent bystanders as well. Public officials at all levels are being corrupted by drug money. Law enforcement has reports of rural sheriffs and police accepting payments of $50,000 or more merely to "look the other way" while traffickers make a single landing at a makeshift airstrip. Clearly, the violence and corruption attending the illicit drug business threaten the very foundations of our system of law and order.

UNITED STATES GOVERNMENT STRATEGY

On October 5, 1982, President Reagan released the 1982 Federal Strategy for the Prevention of Drug Abuse and Drug Trafficking. The Strategy sets the tone and direction for the United States Government's overall effort to reduce drug abuse during the coming years. DEA is involved in the drug law enforcement and international aspects of this Federal response, which is also directed at education and prevention, treatment and research.

INTERNATIONAL NARCOTICS CONTROL

In the international forum, the United States Government is developing and implementing a long-range, organized effort to work with drug source nations to eliminate illicit drug production and to interdict drugs in transit. Some specific initiatives of this aspect of the Strategy include:

- Encouraging and assisting other countries to develop programs to eradicate illicit drugs grown or produced within their borders, and to address their internal drug problems;
- Exploring with other governments ways to monitor and to impede the substantial cash generated by illicit drug transactions; and
- Participating in international drug control and enforcement organizations to gain greater cooperation among all nations in which illicit drugs are produced, transmitted, and/or consumed.

At the core of DEA's international activities is support for source country efforts to interdict drugs before they enter international traffic. This strategy has a substantial impact on the drug traffic because the quantities of drugs seized at or near the source are much larger and purer than those seized on the streets of United States cities. Toward meeting this objective, DEA provides technical assistance through training and exchanges of intelligence in cooperative investigations. DEA personnel stationed overseas also work with the State Department and our diplomatic missions in support of host country efforts to eliminate cultivation, production, and conversion of drugs.

DEA has assigned approximately 275 individuals to 62 offices in 42 countries throughout the world. Our country attaches, agents, intelligence analysts, and support personnel oversee, encourage, advise, and assist host countries in the development and implementation of effective measures to control licit drug crops, reduce illicit cultivation and conversion, and interdict illicit drug shipments at staging areas in-country and along trafficking routes. As a result of outstanding cooperation between DEA and host country counterparts, there have been significant advances in coordinated operations with some source and transit countries. This progressive approach to cooperative international narcotics control has given the United States enhanced operational capabilities, and has been invaluable in the investigation of major drug trafficking organizations.

Although DEA's first priority in the fight against drug abuse is vigorous law enforcement action, the Agency is firm in its commitment to the United States' international programs. DEA is proud of its contributions to the international drug control effort.

For example, of the three opium producing countries in Southwest Asia, Pakistan is the only country in which DEA maintains a presence. It is also the only country in the region to remain largely unaffected by changes in government during the past four years. DEA enjoys a good relationship with the Pakistan Narcotics Control Board (PNCB) and has assisted the PNCB in the identification of trafficking organizations and the location of heroin processing laboratories. Unfortunately, the tribal area of the Northwest Frontier Provinces (NWFP) of Pakistan, the principal opium growing area of the country, is an area over which the Government of Pakistan has difficulty exerting influence, and in which narcotics traffickers freely smuggle opium and convert it to heroin. The Government of Pakistan must be extremely cautious in taking any measures that could upset the delicate relationship it maintains with the Pathan tribes of NWFP. The Soviet presence in Afghanistan has heightened this sensitivity, making it even more difficult for the Government of Pakistan to take steps that might antagonize these fiercely independent tribes. Despite these obstacles, DEA is working vigorously with law enforcement counterparts to eliminate heroin laboratories in this area.

DEA is providing the PNCB with intelligence that has led and will continue to lead to major seizures and the identification and immobilization of heroin conversion laboratories and the major trafficking organizations that operate them. Since 1980, DEA has assisted the PNCB and Pakistan Customs in providing basic and advanced narcotics enforcement training to more than 750 Pakistan enforcement officials.

The consequences of increased supplies of Southwest Asian heroin are being experienced in several Western European nations as well as the United States. DEA's timely and active support to European nations has helped to contain this problem. The international enforcement community, with DEA participation, has had significant success in penetrating several drug trafficking networks and disabling heroin conversion laboratories in Italy and Southwest Asia.

In Southeast Asia last year, the Government of Thailand launched several major suppression operations against the Shan United Army (SUA), which controls most of the narcotics activity along the Thai/Burma border. Despite these efforts, opium continues to be plentiful in the area.

DEA is working with Thai authorities to develop intelligence on trafficking organizations operating along the Thai/Burma border to enhance the Thai Government's ability to suppress operations and reduce the amount of opium grown and converted into heroin. In addition, DEA personnel in Southeast Asia are supporting United States' domestic investigations of Thai nationals trafficking in Southeast Asian heroin in Los Angeles and New York.

The diversion of legitimately produced pharmaceuticals from international commerce is a major problem affecting the United States. Methaqualone, a powerful sedative-hypnotic trafficked to the United States from European and Asian sources, had been this country's fastest growing drug problem until a series of diplomatic initiatives were undertaken to limit the manufacture and exportation of methaqualone to meet minimal legitimate medical needs.

Through the efforts of the U. S. diplomatic community supported by DEA's International Diversion Program,Germany, Austria, Hungary, and the People's Republic of China have all agreed to reduce or cease methaqualone production and to place strict controls on its exportation. As a result, seizures of methaqualone between 1981 and 1982 decreased by more than 80 percent and drug injuries have been reduced by 40 percent since 1980.

If a significant reduction in the availability of illicit drugs is is to be realized in the United States, then the United States and the governments of other nations must work together to eliminate the cultivation and production of illicit drugs in the source countries where supplies are most heavily concentrated. However, the United States' international drug control activities are long-range diplomatic efforts over which the United States has limited control; the effective elimination of drugs at their foreign sources may be several years off. In the interim, the United States should, therefore, accelerate its efforts in those areas over which it does have control -- domestic law enforcement and drug education.

DOMESTIC DRUG LAW ENFORCEMENT

A primary goal of the 1982 Strategy is to bring to bear the full range of Federal, State, and local government resources against drug trafficking organizations in the United States. This goal emphasizes the arrest and conviction of high-level drug traffickers, the forfeiture of their assets, and the removal of drugs from the illicit market. Specific objectives of the domestic drug law enforcement aspect of the Strategy include:

- Increasing the capabilities of Federal drug law enforcement through improved management, broadened involvement, and enhanced cooperation and coordination among Federal agencies;
- Improving cooperation and coordination among Federal, State, and local law enforcement agencies, and encouraging state and local efforts to eradicate illicit drug production and cultivation; and
- Targeting investigative resources on the range of key criminal activities associated with trafficking organizations.

In pursuit of these objectives, a number of initiatives and programs have been undertaken to supplement DEA's ongoing enforcement activities.

In January 1982, the Attorney General assigned the FBI concurrent jurisdiction with DEA over Federal drug investigations and announced that the Administrator of DEA would function under the general supervision of the Director of the FBI. Both agencies, working together, developed operating guidelines for drug investigations. They provide that DEA continues as the principal Federal drug law enforcement agency responsible for enforcing the Controlled Substances Act, the diversion control progam, drug intelligence analysis, and publication of appropriate strategic assessments; and that the FBI continues as the principal Federal investigative agency attacking organized crime.

These guidelines place strong emphasis on major distributors and organizations involved in the manufacture, distribution and financing of illicit controlled substances. High-level conspiracy investigations are the foundation of all joint

DEA/FBI investigative efforts.

In granting concurrent jurisdiction to the FBI, the Attorney General added to the nation's drug law enforcement effort the support of 7,700 FBI agents in more than 500 offices around the country. Since the new DEA/FBI alliance was formed, approximately 450 major joint investigations directed at the upper echelon of the drug trafficking networks have been initiated.

As part of the joint efforts, DEA and the FBI are cross training agents to enhance interagency understanding and make each agency's expertise available to the other.

FBI Special Agent accountants bring valuable expertise to the financial aspects of drug investigations. The FBI's network of informants and its investigative expertise in the area of organized crime are all important tools brought into the Federal drug law enforcement partnership.

In addition, each agency's scientific laboratories are being used effectively to make the special capabilities of each available to the other. Intelligence personnel from both agencies are working together to ensure that all criminal intelligence data bases are searched to provide specific targeting information to agents in the field.

Three other Administration initiatives have addressed forcefully and directly the 1982 Strategy's call for broadened Federal coordination: the Vice President's South Florida Task Force, the Organized Crime Drug Enforcement Task Force Program (OCDETF) and the newly created National Narcotic Border Interdiction System (NNBIS).

In March 1982, President Reagan announced the formation of the South Florida Task Force to address the severe drug trafficking and other related crimes in that part of the country. The Task Force consists of personnel from DEA, U. S. Customs, the Bureau of Alcohol, Tobacco, and Firearms, the Immigration and Naturalization Service, the Department of Defense, and the U. S. Coast Guard.

DEA and Customs participate in this program under a Joint Task Group currently consisting of 54 Customs Special Agents and Patrol Officers and 65-70 DEA Special Agents. This group, directed by a DEA Task Force leader and a Customs Deputy Task Force leader, conducts both preliminary and post-drug smuggling investigations, as well as financial investigations throughout the State of Florida. DEA and Customs have a long history of cooperation both within and beyond South Florida which includes the exchange of information at both the Headquarters and field levels, and joint participation in various investigative operations.

As a result of cooperative efforts in South Florida, nearly 1,300 violators have been arrested and seizures totalling more than 780 tons of marihuana and more than 3,000 pounds of cocaine have been made during the 13 months of the initiative's operation.

Another crucially important component of the cooperative Federal effort in South Florida is the implementation of increased military assistance now available under an exception to the posse comitatus statute. This exception permits appropriate use of military resources in interdicting drug shipments. These resources are provided through intelligence and tracking by military aircraft and vessels of ships or airplanes suspected of carrying drugs to the United States. The contribution of the military has been invaluable in helping to reduce the drug flow into Florida and other states adjoining the Gulf of Mexico and the Caribbean.

laboratory personnel support DEA through latent fingerprint examination of drug packaging. The FBI Document Section will support DEA with its expertise in analyzing books and records often confiscated in drug cases. These records are often coded and contain extensive information concerning the importation and distribution of drugs in the United States. FBI personnel are presenting courses of instruction to DEA basic Special Agents to make them aware of FBI services and to increase their awareness of physical evidence handling.

Question 14:

What is the status of the DEA effort to change from the civil service to the "excepted service?"

Answer

The Department of Justice proposal to place DEA in the excepted service is being reviewed at the Office of Personnel Management (OPM).

Question 15:

In a speech before the International Association of Chiefs of Police last November, the Attorney General said: "A dollar spent on drug enforcement in a source country is a far more effective dollar than one spent anywhere else along the distribution trail." It is apparent that efforts have been made by the Administration to strengthen our domestic investigative activities as well as our border interdiction program. What efforts have been made in connection with DEA's overseas responsibilities which would implement the policy statement of the Attorney General?

Answer:

Please refer to the "Assessment of Drug Trafficking" (6/15/83) provided to the Committee on the Judiciary, pages 13-18, for an overview of the Drug Enforcement Administration international narcotics control program.

In short, DEA's objective overseas is to reduce the supply of drugs at or near the source, to immobilize clandestine drug conversion laboratories, to promote the discovery of staging areas to enhance drug interdiction, and to assist foreign governments in their efforts to minimize diversion of licit drugs. The focus of DEA's effort in all of these areas is "institution building"; that is, to provide the training and other means required to assist the foreign nations in the development of self-sufficiency with regard to drug law enforcement.

Furthermore, the DEA presence in over 40 countries around the world provides an international network for the exchange of drug trafficking intelligence. In this manner, DEA is able to link investigative activity from around the world with the enforcement efforts being conducted in this country.

Over the past five years, with the exception of one year without growth, DEA has been steadily enhancing its foreign cooperative program. Increases have been made in both funding dedicated to the program, as well as in positions. In fact, the Foreign Cooperative Investigations Program is ranked first for program increases in the DEA Fiscal Year 84 budget submission.

As an example of the type of initiatives DEA is pursuing, in August of this year DEA, in cooperation with other agencies of the United States law enforcement establishment, will go to Peru to conduct two financial investigations schools for Peruvian enforcement, prosecution and bank officials. This training will provide them with the background and tools needed to exploit financial intelligence in their drug investigations and will, as a by-product, further enhance U.S. drug investigations.

To accomplish the Federal initiatives in South Florida, law enforcement resources were shifted from other areas of the country, and drug traffickers began to shift their routes toward those areas. Therefore, it became apparent that a national approach to the drug trafficking situation was needed, and the Administration began drafting new initiatives to address this need.

A third major initiative has recently commenced. Last October, the President announced an eight-point program to combat organized crime and drug trafficking. The Organized Crime Drug Enforcement Task Force Program (OCDETF) established 12 new regional task forces across the country, a Presidential Commission on Organized Crime and Drug Trafficking, and a special Governor's Project to enlist the 50 state governors in a united campaign against drug trafficking and organized crime.

The 12 Task Forces, headquartered in Boston, New York, Baltimore, Atlanta, Houston, St. Louis, Chicago, Detroit, Denver, Los Angeles, San Francisco, and San Diego, operate under the direction of the Attorney General and also work with state and local law enforcement officials. These Task Forces are utilizing the law enforcement resources of the Federal Government including DEA, the FBI, the Internal Revenue Service, ATF, the U. S. Marshals Service and the U. S. Customs Service. In those regions of the country where it will be effective, Department of Defense tracking and pursuit capabilities are available to support Task Force efforts.

Recognizing the increased involvement of organized crime in drug trafficking, these Task Forces are targeting and pursuing the highest levels of organized criminal enterprises trafficking in drugs. Their focus is on those who direct, supervise, and finance the illicit drug trade -- levels of involvement that are appropriate to the Federal role.

The Task Forces complement existing Federal enforcement efforts against drugs and organized crime through the strategic application of additional resources. Last December, the Congress appropriated $127.5 million for the program for the remainder of the fiscal year. This funding permits creation of over 1,100 investigative and prosecutorial positions. For its part, DEA has already committed 270 senior Special Agents to the program and the increased resources are allowing us to restaff their former positions.

This commitment allows us to further an intensive and coordinated campaign against international and domestic drug trafficking and other organized criminal enterprises. We are making full use of financial investigative techniques, including tax law enforcement and forfeiture actions, to identify and convict high-level traffickers and enable the government to seize assets and profits derived from drug trafficking. Meeting these objectives will also result in the seizure of large quantities of illegal drugs, and the disruption of sophisticated drug trafficking organizations.

Less than two months ago, President Reagan announced the implementation of a fourth major initiative: the formation of the National Narcotics Border Interdiction System (NNBIS). NNBIS is designed to coordinate the work of those Federal agencies with existing responsibilities and capabilities for interdiction of sea-borne, air-borne, and cross-border importation of drugs. This program will complement the work of the regional Organized Crime Drug Enforcement Task Forces, and, based on lessons learned in

South Florida, will expand the interdiction concept to all borders of the country.

NNBIS will monitor suspected smuggling activity and coordinate the various Federal agencies' seizures of contrband and arrests of illegal drug importers. Headed by Vice President Bush, NNBIS will operate under the direction of an Executive Board composed of the Secretaries of State, Treasury, Defense and Transportation, the Attorney General, the Counselor to the President, the Director of Central Intelligence Agency, and the Director of the White House Drug Abuse Policy Office.

There are several other more significant ongoing DEA operations and programs that support the objectives of the 1982 Federal Strategy.

DEA has been successful in its efforts to minimize diversion of legitimate controlled substances from the pharmaceutical industry. DEA continues to maintain strong cyclic investigation and other domestic programs.

In recent years, DEA has redoubled its efforts to attack the growing problem of practitioner-level diversion. The Targeted Registrant Investigation Program (TRIP) was developed in 1980 to direct available investigative resources toward the highest level of practitioner violators. During 1982, DEA initiated more than 300 cases involving willful diversion by practitioners.

The investigation of so-called "stress clinics" and "store front clinics", which act as prescription mills for controlled drugs is a good example of this effort. DEA estimates that in the Detroit area alone these clinics distributed between six and seven million dosage units of highly abused drugs over a two year period. Twenty-nine indictments were returned in one case against two physicians, seven pharmacists, and six corporations on a range of charges, including illegal distribution, conspiracy and continuing criminal enterprise.

In addition to its criminal diversion activities, DEA continues to promote the self-policing efforts of the pharmaceutical industry through its diversion prevention efforts. The quantities of controlled drugs prevented from entering the illicit distribution channels by informed and highly-motivated manufacturers and distributor registrants cannot be measured, but the response from industry over the past ten years has been positive and has shown other tangible results. For example, the amount of time required for cyclic investigations has been greatly reduced, allowing more investigative resources to be channelled into the TRIP program.

Also, DEA has been working with the American Medical Association on a program to aid the states in identifying the nature, magnitude, and source of prescription drug diversion and abuse within their jurisdictions.

Another domestic program important to the 1982 Federal Strategy involves the production of marihuana within the United States borders. In 1982, DEA's Domestic Marihuana Eradication and Suppression Program was expanded to include 25 states -- 18 more states than participated in the 1981 program. DEA's role in this cooperative venture is to encourage state efforts and to contribute funding, training, and investigative and aerial support to state and local law endorcement agencies engaged in domestic marihuana eradication and suppression.

Last year, DEA provided the states with nearly $1 million to help defray the expenses of their program. The DEA Airwing flew 481 missions for a total of 1,332 flying hours in support of the eradication effort. By all measures, the Domestic Marihuana Eradication Program was extremely successful. More than two million marihuana plants were eradicated, over 2,500 violators were arrested, and 785 weapons were seized. Operational relationships and procedures have become more established, an intelligence data base has been developed, and an additional 15 states have asked to participate in the 1983 program.

Adequate, timely, and reliable intelligence is important to the entire 1982 Strategy. The El Paso Intelligence Center (EPIC) continues to grow as a full-service intelligence center, providing 24-hour tactical intelligence to Federal and state law enforcement agencies around the country. In the past year, EPIC supported air and maritime operations in the Caribbean - Central America - South America area, serving as the primary clearing-house for intelligence data.

EPIC's contribution to increased information exchange with the military under the exception to posse comitatus has been invaluable. During 1982, the Internal Revenue Service and the FBI became the eighth and ninth permanent Federal agencies represented at EPIC, and 46 states and two U. S. territories now participate formally in the program or through their membership in multi-state regional intelligence networks.

Another domestic program, the DEA/State and Local Task Force Program, has proven itself an effective complement to the Federal drug enforcement effort. These Task Forces increase the effectiveness of State and local drug enforcement activities aimed at the mid-level violator, the link between supplier and consumer. In 1982, the Task Forces continued to elevate the level of cases in which they were involved. The overall conviction rate for Task Force cases ranges from 95 to 98 percent in Federal and State courts.

DEA continues to focus ongoing efforts on financial investigations involving international money flows and the drug traffickers'

The President has said that the campaign against drug abuse in the United States is a campaign we cannot afford to lose. DEA is optimistic that the significant inroads made in limiting the availability of illicit drugs in this country will continue, and that broad reductions, not only in the availability of drugs, but also in the demand for them by our citizens will be realized. DEA is proud of its role in this campaign and pledges its full dedication to the goals of the Federal Strategy.

The CHAIRMAN. Now, in recent hearings, Members of Congress have demonstrated their increasing concern about the diversion of pharmaceutical drugs. It is my understanding that DEA's drug abuse warning system shows that 15 of the top 20 abused drugs are of licit origin, and these drugs account for between 60 and 70 percent of the drug injuries in the United States. The United States has been critical of other countries for failing to stop the flow of drugs to the United States, but with diverted drugs, we can only criticize ourselves.

What priority do you place on the problem of diverted pharmaceutical drugs, and what successes have been achieved?

Mr. MULLEN. The diversion of licit drugs into the illicit use area is a priority within DEA, and many of the investigations would fall under the dangerous drugs operation at DEA headquarters, or under the diversion control section also at headquarters.

We have found that diversion is a serious problem from the illicit area, not only through illicit prescriptions—and DEA does supervise in excess of 600,000 individuals who are authorized to dispense drugs; in 1982, for example, we removed the licenses from 185, took away their authority to dispense drugs licitly because of their activity in overprescribing and what-have-you, so we have an effective program in that area. We have a program we call TRIP, the targeted registrant investigations program, and we computerize the lists of drugs ordered by consumers around the country, and when we see a fluctuation, for example, somebody ordering more drugs than they should, we go out, and we take a look and see why. In another area, DEA sets quotas on the drugs that can be produced by pharmaceutical companies, and if we see too much of a drug available in the illicit area, then we reduce the quota, the authority of the pharmaceutical companies to produce excess amounts of that particular drug. So I believe we do have an effective program in the area of diversion of licit drugs, Mr. Chairman.

The CHAIRMAN. Thank you.

Now, Mr. Mullen, I have a number of questions dealing with the FBI/DEA relationship that you are in a very unique position to answer since you have served as Acting Administrator of DEA for approximately 2 years and as Executive Director of the FBI for 3 years—that is correct, isn't it?

Mr. MULLEN. With regard to Executive Assistant Director, I was in that position—it has been over 2 years now—I think about 1½ to 2 years, somewhere in that period.

The CHAIRMAN. It is my understanding that on March 12, 1982, you and FBI Director Webster approved the Implementation directive for concurrent drug investigative jurisdiction between the DEA and the FBI. The purpose of this document was to establish responsibility and accountability for both agencies.

Now, Mr. Mullen, has this proven to be a useful document, is it practical, and have you made periodic reviews to determine if any modifications are needed?

Mr. MULLEN. Mr. Chairman, it has proven to be a useful document because it sets forth in writing the responsibilities of both agencies in conducting joint investigation. For example, if there is to be a court-authorized wiretap, it sets forth which agency will submit the request for the wiretap; with regard to utilizing informants, how the informants will be paid, who will control the informants; if there is a joint investigation, who is going to direct the investigation. So it sets forth these guidelines, which are absolutely essential when you have two major Federal investigative agencies coming together for a common purpose.

We have reviewed the document periodically. We reviewed it in October 1982, and then this past March, in March 1983, we had a joint SAC conference. All of the agents in charge of DEA offices and FBI offices met at Hot Springs to discuss our investigative programs, and we discussed this document. No major modifications have been made. There has been some clarification of terms and so forth. It has been proven to be workable and effective, though.

The CHAIRMAN. Mr. Mullen, in your opinion, has placing the DEA Administrator under the supervision of the FBI Director diminished the functions or responsibilities of the DEA Administrator as the Nation's chief Federal narcotics enforcement officer?

Mr. MULLEN. I do not believe, Mr. Chairman, that it has diminished the role of the DEA Administrator. DEA is still recognized in the international community as the lead investigative agency, or the principal investigative agency, in the area of narcotics. DEA represents the United States in the international drug law enforcement community, and we handle all overseas investigations.

Domestically, the DEA Administrator chairs the Narcotics Committee for the International Association of the Chiefs of Police, and DEA is the main representative with local law enforcement in the area of narcotics investigations.

The DEA Administrator continues to manage DEA on a day-today basis with regard to directive investigations, personnel matters, such as transfers, hiring, training, and so forth.

When there is a major policy issue, such as the preparation of guidelines for working together, where there are programs, for example, both DEA and the FBI had a program going forward to develop voice privacy for our radios so we could conduct investigations more effectively, and a determination had to be made as to how we were going to make those programs work together and what system we were going to utilize. That is the type of policy decision that I would refer to or discuss with Judge Webster and get a reading from him.

The **Chairman**. Mr. Mullen, we have more questions for which we would like answers. In the interest of time, these will be submitted to you, and you can answer them in writing.

[Subsequent to the hearing, the committee received the following for the record:]

assets. These investigations, which involve close cooperation among DEA, Customs, IRS, and the FBI, are generally aimed at isolated violators who direct, control, and profit from the drug traffic. These investigations also target re-investible profits for forfeiture, which contribute significantly to the immobilization of major trafficking organizations. During 1981, DEA, in cooperation with other agencies, was responsible for the seizure of drug related cash and property valued at $161 million; in 1982, this figure rose to $188 million.

These are some examples of how DEA has participated in the Administration's strategy for the prevention of drug trafficking. It is important to recognize that controlling the drug problem from source countries is a long-term proposition. For the present, it cannot be the United States' primary solution.

The wide-spread availability of drugs and the involvement of organized criminal enterprises dealing in violence and corruption pose real and immediate dangers to our society. For the present, this country must accelerate its efforts toward achieving those elements of the drug control strategy within our grasp. The most immediate need is for continued vigorous pursuit of a strong law enforcement program. Furthermore, the education of our citizens about the hazards of drug use must be continued and expanded.

The drug abuse prevention efforts of Mrs. Reagan and the many programs with which she works are most laudable. It is encouraging that professional associations and parent groups, such as Pharmacists Against Drug Abuse and the National Federation of Parents for a Drug Free Youth, are actively involved in the national education effort. The continued interest and participation of the various elements of our society, both inside and outside the government, is our strongest weapon against the drug abuse problem.

Senator Thurmond's Questions

Question 5:

In previous Department of Justice testimony, by way of support for the realignment of the DEA/FBI relationship, several areas were mentioned which were identified as benefits which would accrue to the Federal drug law enforcement effort. Basically, they were that additional personnel would be available for drug enforcement; more sophisticated investigative tools would be available; the proposed structure would increase asset seizure efforts; and the FBI network of informants and criminal intelligence would enhance the development of drug cases. Would you comment on the benefits that have, in fact, accrued to the drug enforcement effort as a result of the realignment?

Answer:

The Federal drug law enforcement effort has been greatly enhanced by the support provided by the Federal Bureau of Investigation since concurrent jurisdiction was granted in January 1982. The FBI is now dedicating approximately 12 % of its investigative time toward drug investigations. One measure of this success is demonstrated by the rise in the number of investigations conducted jointly by DEA and the FBI. In June 1981, there were 12 investigations being conducted jointly; two years later there are 475. Another indicator is the increase in the utilization of court-authorized wiretaps, a very manpower intensive, sophisticated investigative tool. There was a 178 % increase in the utilization of drug-related Title III's from 1981 to 1982--an increase directly attributable to FBI involvement. Since 1981, based on quarterly averages, there has been more than a five-fold increase in drug-related court-authorized wiretaps.

There are no readily identifiable indicators to reflect increased intelligence sharing. However, procedures have been established and implemented to ensure that FBI agents have access to DEA drug-related information and intelligence, and vice versa. Thus, there is a greater field of drug information available to both agencies.

The FBI assisted DEA in the development of an advanced curriculum for asset removal training (financial investigations.) Additionally, FBI legal instructors are on detail to the Federal Law Enforcement Training Center (FLETC) to assist with Title 18 and Title 21 curricula and with courses on the FBI role in organized crime and drug law enforcement. The FBI is also providing instruction to DEA agents on the many facets of their laboratory and forensic capabilities. DEA senior management has benefited from advanced instruction provided to them at the FBI Academy at Quantico. Similarly, DEA has provided extensive training to the FBI which has enhanced their ability to investigate criminal organizations involved in drug trafficking. (Please also see the answer to question 13.)

In general, an examination of the level of investigations concluded within the last year and one-half clearly demonstrates that the full extent of Federal investigative techniques are being exploited and that the indictments brought reflect the full range of all applicable violations.

Question 6:

Are FBI arrests, indictments, convictions, forfeitures and seizures distinguished from those effected by DEA in statistical compilations?

Answer:

DEA and the FBI maintain separate enforcement activity measurement statistics. Both agencies' systems have mechanisms and indicators to distinguish and isolate those activities conducted with another agency from those conducted independently. To the best of our ability, there is no double counting of enforcement activity.

Question 7:

Mr. Mullen, would you describe the case management techniques used by the DEA and the FBI; for example, who decides which agency has responsibility for drug cases, and are case records for all drug investigations centralized?

Answer:

The case management techniques and procedures used by either DEA or the FBI are established in each agency's respective Agents Manual and/or other appropriate directives. The "Implementation Directive for Concurrent Jurisdiction Between the Drug Enforcement Administration and the Federal Bureau of Investigation" is explicit with regard to investigative coordination in joint investigative matters including: expenses, informants and cooperative witnesses, technical support, evidence processing, seizing assets, coordination with other agencies, etc.

In the furtherance of coordination, DEA also has a supervisory Special Agent assigned to the FBI Headquarters Narcotic Unit to review investigative information and ensure that the appropriate individuals are cognizant of FBI investigative activity. Similary, FBI personnel assigned to DEA work to ensure that appropriate investigative matters are made known to the FBI. However, the primary means of effective coordination is the field liaison agents from both DEA and the FBI, who effect day-to-day coordination of enforcement activity.

DEA centralizes all investigative case records at DEA Headquarters, as does the FBI at its Headquarters. DEA uses the Narcotics and Dangerous Drug Information System (NADDIS) as a centralized index of all drug investigative information. This ADP system is available in all DEA domestic offices, 19 foreign posts, and will ultimately be available in many more overseas offices. The FBI will soon begin entering its drug-related investigative information in NADDIS.

Question 8:

What has been the field experience in those cases investigated by both the FBI and DEA in terms of coordination of effort and supervision of agents?

Answer:

At the outset of the implementation of concurrent jurisdiction over a year and one-half ago, there was some evidence of confusion; however, very shortly thereafter, the situation settled down. Reports from both managers and agents in the field indicate that there are a minimum of problems regarding investigative coordination.

Question 9:

How are conflicts resolved between DEA and FBI Agents, if such arise during the case investigation process, and who is the ultimate authority figure responsible for resolving such conflicts?

Answer:

While there are few unresolvable conflicts in the field at the investigator level, there is a mechanism established in the "Implementation Directive for Concurrent Jurisdiction" to resolve such disagreements. The Directive stipulates that if the matter cannot be resolved through management channels in the field or at a low level in respective headquarters, conflicts are brought to the "Headquarters Review Committee." In the unlikely event that the dispute could not be resolved by that committee, the matter would ultimately be resolved by the DEA Administrator and then the FBI Director.

Question 10:

Are any plans being developed to further merge the two agencies?

Answer:

Inasmuch as concurrent jurisdiction is proceeding smoothly and the objectives of involving the FBI in drug law enforcement are being met, there are no plans to merge the DEA into the FBI.

Question 11:

How has the closer alignment affected morale among employees of the DEA and the FBI?

Answer:

After the initial period of lowered morale brought about by the uncertainties associated with the implementation of concurrent jurisdiction, morale and esprit de corps have steadily risen and, in fact, are higher now than before the FBI was brought into drug law enforcement. Based on recent informal reports from many investigators at all levels and the senior-most managers of both agencies, we have found morale and the spirit of cooperation at very high levels.

Question 12:

Has the realignment of the DEA/FBI relationship brought about an enhanced collection and analytical capability with regard to the handling of both strategic and tactical intelligence?

Answer:

Yes. As the principal agency for drug law enforcement and collection, analysis and dissemination of drug intelligence, DEA has been aided by the recent infusion of FBI resources and investigative experience. Improved cooperation, coordination and exchange of information has resulted in a more efficient use of drug-related intelligence in support of criminal investigations. DEA has provided extensive intelligence analytical support to many of the over 475 joint investigations being conducted by DEA and FBI worldwide. Based on the analysis of intelligence collected and shared by both agencies, additional targets and methods of operation have been identified.

Specifically, the following examples highlight the enhanced intelligence collection and analysis capabilities of both agencies:

- The FBI is currently initiating a program whereby all the drug-related information it retains and will collect and develop in the future is forwarded to DEA for input into NADDIS (Narcotics and Dangerous Drugs Information System) in order that DEA remain the central repository of drug intelligence.

- DEA and FBI representatives are exploring methods of sharing intelligence collected on traditional organized crime (TOC) figures by both DEA and FBI. The objective is to make OCIS (Organized Crime Information System) users aware of the TOC data DEA maintains and NADDIS users aware of TOC data maintained by the FBI.

- DEA and the FBI will jointly sponsor a supervisory training program on the international laundering of drug money. The program is designed to enhance the investigative ability and intelligence collection efforts of both agencies in the area of financial drug investigations.

- The NADDIS terminal recently installed at FBI Headquarters provides the investigative and intelligence information collected by DEA since its inception.

- DEA Special Agents and Intelligence Analysts have participated in several joint DEA/FBI conferences where intelligence is shared and discussed. Significant case developments have occurred as a result of these gatherings.

- DEA Intelligence Analysts have provided training in tactical, operational and strategic intelligence collection and analysis techniques to FBI analysts. Continuing cross-training of analysts from both agencies is planned.

- During 1982, the FBI became the 9th permanent Federal agency represented at the El Paso Intelligence Center (EPIC). Further enhancement of the FBI role at EPIC is under review. EPIC users will benefit from the addition of FBI drug intelligence as well as provide the FBI information to support its investigations.

Question 13:

What is the magnitude and depth of training provided by the DEA for FBI Agents, and conversely, what training has been provided by the FBI for DEA Agents?

Answer:

The DEA Office of Training prepared a 20-hour indoctrination course for the FBI, which was distributed to all 19 DEA Division Training Officers. The Training Officers then arranged for all FBI Field Agents to attend the course of instruction. Title 21 U.S.C., drug identification, and drug investigations were among the items covered. The FBI prepared a six-hour indoctrination course for DEA Agents, covering Title 18 U.S.C. violations and the FBI's investigative jurisdiction. All DEA and FBI Agents received the indoctrination courses (except those agents serving in a foreign post or those on extended leave or travel status).

Further, DEA developed a Narcotics Specialization Course (2 week) conducted at the Federal Law Enforcement Training Center in Glynco, Georgia for FBI supervisors and senior Special Agents. Through June 1983, 15 such classes have been given and 524 FBI Special Agents have attended this in-depth program.

In order to enhance the FBI's ability to conduct drug investigations, a 20-hour course of instruction was developed by DEA which is presented to all new agents at the FBI Academy at Quantico. To date, over 500 agents have received this training prior to graduation.

Increased coordination between the two agencies has required enhanced technical training for DEA personnel. The first technical school of this type will be conducted for DEA agents in September 1983 at Quantico. This school will stress Title III support in complex criminal investiations. In addition, FBI

The **Chairman**. Now, we have a good many Senators here to ask questions, so if you can, keep your answers as brief as possible.

I have had an emergency arise, and I am going to request the distinguished Senator from Maryland to take over the chair until I come back.

Thank you.

[Whereupon, Senator Mathias assumed the chair.]

Senator **Mathias**. The Senator from Delaware.

Senator **Biden**. Thank you, Mr. Chairman.

I am going to yield, because Senator Kennedy has an Armed Services Committee meeting, and he will go first on our side.

Senator **Kennedy**. Thank you.

Mr. Mullen, we welcome you here to the committee and congratulate you on your appointment. I just have a couple of questions, and I would like to ask that my statement be included in the record.

[The prepared statement of Senator Kennedy follows:]

PREPARED STATEMENT OF SENATOR EDWARD M. KENNEDY

The Judiciary Committee meets today to consider the nomination of Mr. Mullen as Administrator for the Drug Enforcement Agency. Mr. Mullen has an impressive record as a dedicated public servant having come up through the ranks of the Federal Bureau of Investigation to become its second highest official as Executive Assistant Director. Since July 1981, he has been serving as Acting Administrator of the Drug Enforcement Agency.

His nomination by the President for that position attests to the high regard for his past service and the confidence in his qualifications for this sensitive position.

In addition to Mr. Mullen's overall competence, however, I believe that the committee must consider his role in the FBI's investigation regarding the nomination of Secretary of Labor Donovan and his testimony before the Labor and Human Resources Committee concerning that investigation. His testimony on that occasion was not completely candid and may have been misleading. Mr. Mullen has since stated to the press and confirmed in testimony to the committee that he consciously decided to withhold certain information from the committee.

In July of last year the Labor and Human Resources Committee passed a resolution authorizing an investigation to determine whether disclosures to the committee by the FBI had been full, complete, and timely. The committee's special counsel has recently issued a report of the results of that investigation. As the report pointed out, the investigation was not concerned with the allegations against Mr. Donovan but with the failure of the FBI to furnish the committee information it had so that the committee could properly perform its constitutional function of advise and consent.

The issue before the Judiciary Committee today is whether or not the nominee's testimony before the Labor Committee, and his interaction with that committee on the Donovan nomination ought to disqualify him from being confirmed. To answer that question all members have to carefully review the Labor Committee staff report, and weigh that against the testimony we will receive today.

I look forward to receiving his testimony.

Senator **Kennedy**. Let me ask you, if you had it to do over again, would you have done anything differently with regard to your involvement and testimony before the Labor Committee on the Donovan investigation?

Mr. **Mullen**. Senator Kennedy, I have had a lot of opportunity to reflect on that very question, and in view of all of the confusion that seems to have been caused by not mentioning the Masselli reference to the committee, I would have asked for executive session to mention that.

Senator **Kennedy**. Well, I appreciate the response, because obviously, in the position that you have assumed, if confirmed by the

Senate, the nature of the relationship between your organization and the Congress and the confidence of the Congress in getting information from you, as the principal and responsible figure, is something of enormous importance in terms of our fulfilling our responsibility, and I think your response now, that you would ask for the executive session, is obviously important.

Have you had a chance to review the report, and is there anything that you would like to say in response to it? Would you want to respond briefly today and more extensively in written response?

Mr. MULLEN. I would take issue with some of the conclusions, Senator. I am not prepared to address them in detail here. I do not know that a written response will be prepared. I think it is likely that it will be by, perhaps, the FBI and Department of Justice. But I would be happy to respond to any questions you may have.

Senator KENNEDY. Well, specifically, how do you respond to the suggestion in the committee report that you misled the committee?

Mr MULLEN. I, Senator Kennedy, would never intentionally mislead a committee. Now, in reviewing the transcripts of my testimony with regard to the confirmation hearing for Secretary Donovan, I can see how it would appear to some that that may be the case. But all I can do is say it was not an intentional misleading. There may have been some misunderstanding. But I can only personally assure you that I would never intentionally mislead a committee; there is just no good reason to do that, and no one with any sense at all would do that

Senator KENNEDY. Can you give us the assurance that, should you be confirmed, that there would be no circumstances whatsoever where you would withhold information from the appropriate committees of the Congress?

Mr. MULLEN. I can give you that assurance, Senator Kennedy. I cannot give you the assurance that there will not be errors in judgment; that may occur, but to the best of my ability——

Senator KENNEDY. No, just on either the withholding of any information that is requested or, to the best of your knowledge that any information that you would give would be as complete and accurate and subject to as accurate an interpretation as you could possibly give.

Mr. MULLEN. Yes; I recognize the Senate's need for adequate information to perform its duties and fulfill its obligations, and I will make that commitment to you, yes, sir.

Senator KENNEDY. That there would not be any circumstance where you would withhold any information from any of the appropriate committees of the Congress on any of the matters that would be in your Department.

Mr. MULLEN. I can give you that assurance, yes, Senator.

Senator KENNEDY. I thank my colleague, and I thank Mr. Mullen for his response.

Senator BIDEN. Mac, why don't you go, and I will wait on my own time next.

Thank you.

Senator MATHIAS. Mr. Mullen, last year, we conducted the so-called Abscam investigation in the Senate, and it was noted at that time that the DEA, unlike the FBI, did not have detailed guidelines for the conduct of undercover operations. Since the DEA was planning to expand the use of undercover techniques, the Select Committee—the Abscam Committee—recommended that the DEA develop guidelines similar to those that had been adopted by the FBI. There was some testimony before the committee that you, as the Acting Administrator, were considering the establishment of an Undercover Operations Review Committee similar to the Review Committee which now exists in the Bureau. I am wondering if you can tell us what actions have been taken, since you became the Acting Administrator, to provide more detailed guidance, more supervision and more training to DEA agents in the conduct of undercover operations.

Mr. MULLEN. We, Senator Mathias, do not yet have an Undercover Review Committee. I do have a joint DEA/FBI group, looking at establishing similar guidelines for both agencies with regard to undercover operations. We have not yet completed that task. We do control, to some degree, the long-term, long-range undercover operations within DEA. We call them special enforcement operations, and those are supervised more closely from headquarters.

Many of the DEA investigations involve undercover work; it is the nature of the work, and the undercover activity is perhaps more extensive than even in the FBI. Many of them are short term, and we are looking at ways to bring all of the undercover activities and setting up an undercover unit, a special support unit at DEA headquarters, similar to that which exists at the FBI. We have not yet completed that work.

What I would like to do, if I may, is submit something in writing to you to give you an update on that status.

Senator MATHIAS. We will be glad to have it, and we will hold the record open to receive it. But your testimony is, to be sure I understand it, that if you are confirmed as an Administrator, you will work to establish the guidelines and the Review Committee?

Mr. MULLEN. That is correct. It has proven very effective at the FBI, and I think it could be useful, and in fact, a protection for the agents working in this area.

Senator MATHIAS. And you would provide such training as may be appropriate for DEA agents involved in undercover techniques, so that they would understand the guidelines and the review process?

Mr. MULLEN. We would provide such training.

Senator MATHIAS. Well, we will look forward to your further written statement on that subject.

[Subsequent to the hearing, the following was received for the record:]

UNDERCOVER OPERATIONS REVIEW COMMITTEE

DEA began utilizing undercover personnel and undercover operations at its very inception. Undercover operations directed against high-level drug violators has and continues to be the cornerstone technique used by DEA in drug investigations. This technique has traditionally been utilized on a short-term basis and together with overt investigations has been, over the years, an extremely effective tool in detecting, arresting and convicting major drug traffickers.

With the advances in the general enforcement program, including the increase in the number of joint investigations conducted with the FBI, and with the direction of the program moving toward the use of increasingly sophisticated long-term undercover investigations, I have requested that DEA program managers explore the establishment of an Undercover and Special Operations Unit. There is now one such draft proposal under review within the agency.

This proposal recommends that a central unit be established at DEA Headquarters with centralized management controls of all aspects of undercover operations. The responsibility of this unit would include the issuance and control of alias and false identification, the monitoring of all long-term undercover operations, as well as selected short-term operations (based on time and sensitivity) in coordination with the operations section responsible for the investigation. The DEA Chief Counsel would set standards for review of major undercover operations.

Currently, DEA undercover operations are governed by the Domestic Operations Guidelines. The majority of DEA undercover investigations now conducted are short-term, "buy/bust" cases, and managed in the field. Long-term undercover investigations, Special Enforcement Operations, are now supervised more closely through existing Headquarters review mechanisms. This system works well. Too much centralized control would impede investigations. The proposed Undercover and Special Operations Unit would be used to ensure uniform application of the guidelines and to assist the field in conducting undercover investigations.

The Department of Justice authorization bill addresses the review of undercover investigations in the section providing for certain exemptions in the conduct of these investigations. As drafted, if any of these exemptions were to be utilized, the DEA Administrator would have to establish review procedures similar to those that the FBI now uses.

You may be sure that I will work to establish an undercover operations review mechanism and develop appropriate guidelines.

Senator MATHIAS. I notice that this year, for the first time, the Justice Department has published guidelines releasing the DEA from certain accounting and other requirements that normally are part of undercover operations. In other words, they want to be on the same basis as the FBI in conducting these kinds of undercover operations.

How have DEA's operations changed to require exemptions which DEA has not found necessary to employ in the past?

Mr. MULLEN. Among the exemptions, of course, are to use appropriated funds, to lease property, to place appropriated funds in bank accounts and use income to offset expenses when conducting undercover operations.

DEA needs this ability or this capability now, because we are conducting more and more long-term investigations similar to that of the FBI, and we have found in several cases, we have had to use the FBI's ability to use these exemptions in order to continue ongoing investigations.

There is a limit on the funds that we can place in a bank account, and it becomes clear to individuals we are dealing with, if we do not have substantial funds in our account, that something is amiss, and it may be an undercover operation.

Senator MATHIAS. But you would anticipate that the employment of these exemptions would parallel the creation of the Review Committee and the establishment of the guidelines?

Mr. MULLEN. That is correct.

Senator MATHIAS. Now, the legislative recommendations of the Abscam Committee are, by and large, embodied in a bill which is known as S. 804, which a number of members of the Abscam Committee introduced in March. I do not expect you to be intimately familiar with every provision in that bill, but it does provide, among other things, some threshold requirements for the initiation of an undercover operation. For instance to initiate a DEA undercover operation, S. 804 would require that you not undertake an undercover program at just any time, but only when certain threshold requirements have been met; it would permanently authorize an exemption for incompatible statutory requirements; and it would provide for indemnification of innocent victims of undercover operations through a tort claims procedure. The latter, I think, might be of particular importance in your area of operations—the indemnification of innocent victims. Do you have any opinion with respect to these recommendations, these provisions of the bill?

Mr. MULLEN. I have not read the bill in detail, Senator Mathias. I would prefer to do that before commenting, although the area that you point out as a matter of concern, that of indemnification, is a serious problem, and perhaps some means of indemnifying would be useful.

I do know that during the past, while serving at the FBI, when we have had difficulty in an undercover operation—for example, a cooperating company was sued by several individuals—that the U.S. Government did represent the company and became a party to the suit. So we have tried to be accommodating in that area where it was clear that there was a problem on the part of the Government.

Beyond that, I would rather not comment until I have become more familiar with the bill.

Senator MATHIAS. Well, let me ask that, at the time you submit your other statement, you include some personal views on these provisions of Senate bill 804.

[Subsequent to the hearing, the following was received for the record:]

I have reviewed S. 804, The Undercover Operations Act of 1983 and find many favorable aspects contained within this proposed legislation. Of particular benefit to law enforcement are those sections which give permanent legislative authority to purchase or lease property under conditions which were previously prohibited; the establishment and operation of proprietaries; the use of proceeds generated by a proprietary to offset necessary and reasonable expenses; the authority to deposit in banks or in other financial institutions funds appropriated by Congress for undercover operations; and the authority to engage the services of cooperative individuals or entities in aid of undercover operations with the authority to execute agreements to reimburse those individuals or entities for their services and for losses incurred as a result of their participation in undercover operations.

However, I am very concerned about certain sections of this proposed legislation. This bill, if enacted, would have a serious detrimental impact on the Drug Enforcement Administration's investigations and on Federal drug prosecutions.

Generally, S. 804 proposes sweeping changes in existing law and practice which would have a negative impact on DEA's conduct and responsibility for drug investigations. First, I have concerns that this bill abolishes the law of entrapment as developed by the Supreme Court over the last 50 years and replaces it with a new defense that will make it much easier for drug traffickers to avoid conviction. Also, the language as drafted would unnecessarily end the utilization of the very successful so-called "reverse undercover" technique and other effective investigative practices.

Second, I have concerns that this bill significantly expands the civil liability of the United States under the Federal Tort Claims Act for damages caused by private parties assisting in undercover operations even when those parties violate their instructions and hide their conduct from the Government. Also, the bill does not appear to add to the protections citizens now enjoy against negligent Government conduct.

A third area of my concern is the section which requires the Attorney General to centralize in Washington, D.C. control of all undercover operations in the United States. Because virtually all major drug investigations involve undercover activities, this proposal would require radical changes in the traditional method of managing thousands of cases. I could foresee extensive costs and, more importantly, severe disruptions to our enforcement program. However, with regard to section of the bill mandating issuance of guidelines, as DEA currently has Domestic Operations Guidelines issued by the Attorney General which address undercover operations, and these guidelines have been disseminated to the Congress and otherwise published, I would have little problem with a legislative requirement requiring same.

In conclusion, these are several personal comments regarding my interpretation of S. 804, and I will defer to the Department of Justice in their final analysis of the impact of this legislation.

Senator MATHIAS. By coincidence or otherwise, the Washington Post this morning had a story which reports that on November 2, 1982, you exercised authority under Executive Order 12356 to reclassify a GAO report on drug enforcement problems. This report would have been automatically declassified 2 years before under the operation of the law.

The news account states that last week, DEA reversed this decision and agreed to release the report, which found insufficient cooperation between DEA and CIA in the field of narcotics intelligence.

Number one, is this an accurate account of the facts?

Mr. MULLEN. Yes, it is, Senator.

Senator MATHIAS. And can you explain to us what the sequence of events was, what it meant to you?

Mr. MULLEN. Yes. This was a GAO report. I think it was prepared around 1975 or 1976, and it was automatically declassified in 1980.

Senator MATHIAS. Just as the result of the passage of time?

Mr. MULLEN. Yes. There is an automatic declassification, I believe, after 5 years. At that time, it should have been reviewed to see if declassification was warranted, and that is also supposed to be automatic. It was not, and it was declassified, and as I understand it—and I have just received this information today, after seeing the article, and I agree with you, it was timely——

Senator MATHIAS. It is funny how some things are more timely than others around here.

Mr. MULLEN. When it was requested—I understand a college professor requested a copy of the report, I do not know for what reason—it was reviewed, and the concern here, Senator Mathias, was not what the report said about cooperation or lack of cooperation; it was the status of our DEA agents overseas. And I will mention this now in open hearing, because I am sure it will be in the media, and the report is being released.

DEA overseas is viewed as a criminal investigative agency, and in that light, we are able to operate in many countries, even some Iron Curtain countries, because we are a criminal investigative agency, not intelligence. This report will show a degree of cooperation between the DEA and the CIA, and we fear it will cause some difficulties for our agency in some countries. That was the reason we asked that it be classified. When we were advised by the Department of Justice that we could not classify it under law enforcement exemption, we then released the material. We were prodded to some degree by Congressman English to release the report.

I would like to state, however, that with regard to the Freedom of Information Act, when I arrived at DEA, I did see significant problems in that area. We had a 2-year turnaround time, and we were not responding adequately to the FOIA. We have reduced the backlog, I am told as of this morning, by 74 percent. Our turnaround time is now 90 days, and we hope to be current by the end of this fiscal year. It is a matter of concern to me that 75 percent of the requests we receive under FOIA are from prison inmates, but we are complying with the act because it is the law.

Senator MATHIAS. What was the breakdown at the time of automatic declassification? Whatever the cause was, has it been corrected?

Mr. MULLEN. I have not looked into that, Senator Mathias.

Senator MATHIAS. But in your judgment, that was a breakdown in the system, there should have been a review before the automatic declassification.

Mr. MULLEN. That is correct. There should have been a review to see if it should have been allowed to be automatically declassified.

Senator MATHIAS. Well, if you are confirmed, will you look into that particular error of administration?

Mr. MULLEN. I will look into that area, yes, sir, I will.

Senator MATHIAS. Have you had any other occasion to exercise the reclassification power?

Mr. MULLEN. That was the only one—that I am aware of at this time. It seems there was one other that was discussed. I do not recall whether or not it was declassified, but there may be one other; I am not certain.

[Subsequent to the hearing, the following was received for the record:]

> To the best of my knowledge, there have been no other instances in which reclassification of a declassified document has been sought. The other instance referenced in the testimony was not a reclassification matter, but concerned discussions regarding the initial classification of a draft document. That matter had been brought to my attention only because of general interest in the subject matter addressed, and the classification issue was appropriately resolved at the subordinate level.

Senator MATHIAS. The Executive order under which this action was taken authorizes reclassification only if the information may reasonably be recovered. Now, as far as I can judge from the news account, which is my only knowledge of the whole subject, the GAO report had never actually been disseminated since the time it was declassified. It was technically declassified, but had not been published so that the problem of reasonable recovery did not arise. Is that an accurate version of the——

Mr. MULLEN. Senator, I do not believe it had been disseminated. Someone noticed before it was being disseminated that perhaps it should be reclassified.

Senator MATHIAS. And this is the only instance of this sort of which you are aware—and I do not charge your memory with every transaction that may have taken place.

Mr. MULLEN. The only one that I can recall. As I indicated, one other may have been discussed. I do not know if it was—but I can respond to that, also, in writing.

Senator MATHIAS. A rollcall is now in progress. Let me ask the Senator from Ohio if he wants to start, or if he wants to——

Senator METZENBAUM. I would prefer to come back and ask some questions.

Senator MATHIAS. All right, then, I think the practical thing to do is to recess briefly. I will provide that as soon as the Senator from Delaware returns—he left first to go vote—he will reconvene the hearing, and will proceed with his 15-minute period of questioning.

The committee will stand in recess until the return of the Senator from Delaware.

[Short recess].

Senator Biden. The committee will come to order, please.

Bud, I think we can speed this up. Why don't we just take a vote, confirm you now, and end it. [Laughter.]

I have several questions. There is not going to be a lot of continuity, because I am not at all sure what preceded me.

There are sort of three general areas that, in my 15 minutes, I would like to touch on, if I can, with the preface that I believe you will be confirmed and, as you well know, I am going to be a thorn in your side for as long as you are there. You may be there longer than I am there, because I am up for reelection. But the fact of the matter is that I will still tell you up front that I am not at all satisfied with the so-called coordinated effort that is going on within the administration to deal with drugs, but we will get into that. Just because I am going to vote for you, I do not want you to walk away with any illusions about my being at all satisifed with the President's plan for drug enforcement and interdiction.

But first let me follow up on a point that Senator Kennedy left off with, and that is the question of sharing information with the U.S. Senate, the appropriate committees, to be more specific. I am not at all interested in pursuing "Who struck John?" and what went on before. I suppose Senators Hatch and Kennedy are much more familiar with that than I, and if they end up being satisfied, I am satisfied.

But let me pursue a portion of your answer that you gave to Senator Kennedy that you would share to the best of your knowledge, and that although you could obviously not vouch for the judgment always being correct, you would give your best judgment. In the 11 years I have been here, the greatest controversies relating to nominees and investigations have occurred as a consequence of the somewhat, I believe, archane method with which we make information available and we exchange information. About a year ago, June 9, to be precise, Director Webster made the following statement to two news reporters:

> The real purpose of this investigation is to help the incoming President decide whether there are problems with his candidate so that he may choose to accept or choose to change his candidate. I think we need to know whether we are preparing these reports for the benefit of the White House's assessment of its candidates and its willingness to proceed with the nomination, or whether we have a corollary responsibility to give to the Senate every bit of information we have provided the White House. If that is our responsibility, we will proceed differently, and will have to resolve the very difficult problem of communicating information to a place where it is very difficult to keep that information secure.

I assume he is talking about the FBI, or the Defense Department, or the CIA.

> Our responsibility is to provide that special inquiry to the White House, and if we have a responsibility that is different, we should define it, and we will comply with it.

Now, shortly after Judge Webster made those remarks, the minority leader, Senator Byrd, expressed an "institutional concern" which required that the Senate take appropriate steps "not only to protect the integrity of the confirmation process, but also to assure the American people that 'we,'" meaning the Senate, "are adequately fulfilling our constitutional role of advising and consenting to the appointments of all top officials who govern us as a nation." That was from a floor statement he made on June 21, 1982.

The leader said he was considering legislation that would require that all relevant information be transmitted to the Senate prior to confirmation. He added—and I agree with him—that, "It makes a mockery of the process for information to be transmitted to the White House and not transmitted to the Senate."

In July 1982, both the minority and majority leaders wrote to Senator Hatch that they were preparing "a leadership bill" which would address this issue. I notice that the Labor Committee's report has suggested a similar idea.

Now, Mr. Mullen, in view of the Director's remarks that the Bureau's present responsibilities are unclear, and that there is a need to provide some clarification, and in view of your understandable need to qualify several times your response to Senator Kennedy's very general answer—as I would, if I were you, qualify it—what would you think of a statute that would require all information which is provided to the White House or to a Presidential transition team be forwarded to the appropriate committee in the U.S. Senate?

Mr. MULLEN. With regard to a statute, Senator Biden, I know the Department of Justice will be commenting on that legislation, and I would rather let them comment on any statute being prepared and have my input into that through the Department of Justice.

Both Judge Webster and I do believe the Senate has to have adequate information, especially in these special inquiry matters, but it has been the established practice to provide the material to the transition team and then the transition team to the Senate.

The Department of Justice has formed a committee, at the request of Judge Webster, and they have studied this problem, and they are going to come out with recommendations, as I understand, the improve the process. I do not know what those recommendations will be or what they are.

Senator BIDEN. Well, Bud, I am not asking for an administration position or a Department position, but the fact of the matter is—and we would all be kidding one another—the only reason it has taken this long for you to get to that table is because of some doubts that have been cast upon, initially, directly upon your integrity, whether or not you deliberately misled the committee. I have resolved that to my satisfaction that that was not the case. But the fact of the matter is, there is no one who, it would seem to me, would be better qualified to respond in his personal views as to whether or not your job this time last year would have been made a whole heck of a lot easier, and you may not have been in the problem you got yourself into, were there a requirement to transmit it all to the U.S. Senate, and in this case, the Labor Committee.

I would like to know what your personal view is. It may not be the view of the administration. What is your personal view?

Mr. MULLEN. I am not certain that a statute is necessary. I believe the FBI, the Justice Department—I cannot speak for transition teams; they will be different in the future—want to be accommodating and want to help in any way that we can. I would really have to see the statute and see what it would require, just how much do you want. If a committee wanted every, single document received, I really believe they would be overwhelmed, and I am not sure you would want that. But as far as a statute requiring the same material being furnished to the transition team and to the Senate, I would not be opposed to that, but——

Senator BIDEN. The reason why I asked—and to make it clear, I am not suggesting, nor did I understand Senator Byrd when he made the statement to be suggesting—any contemporaneous transfer of information. Obviously, I think the President, personally, should have the right to know the background of the person and may judge, after seeing the background report, not, in fact, to nominate him. But if, in fact, he nominated the person, then it seems to me there is no justification to not have it transmitted—and notwithstanding, by the way, Judge Webster's assertion, which I always resent, about not being able to keep a secret up here. I have sat on the Intelligence Committee—that was the inference of his statement—I sit on the Intelligence Committee, and I have witnessed about a half-dozen major leaks, all of them from the administration, and I have been on it since its inception. So that, although there are faux pas and mistakes that are made, if we are going to make judgments about not transmitting information, the last place you should send it is the White House. That should be the absolute last place information in the Democratic or Republican administrations should be sent if you really want to keep a secret. So I just wanted to get that off my chest, and I appreciate your being willing to give your personal view—and I understand full well that it is not necessarily the view of the Department, and it may not be the recommendation that the Director comes forward with.

If I can skip to my pet concern, and that is the need for one person calling the shots in the drug area. On Monday, as you know, the General Accounting Office, released their report on the need for strong central oversight of our Federal drug effort. The report supports the idea of one individual coordinating our antidrug efforts.

I would like to know what your response to this final report by GAO.

Mr. MULLEN. And we are talking about the drug czar?

Senator BIDEN. The coordinator—well, I do not call it a "czar," I call it "Cabinet-level drug officer."

Mr. MULLEN. Senator Biden, I was one of those who was opposed to the drug czar concept. I believe we are coordinating well. With regard to the legislation on the drug czar, a lot of things in my mind were unclear—for example, just what operational control a drug czar would have over FBI or DEA resources; could that drug czar, say, move 30 agents from San Diego to New York; and what kind of staffing and so forth. But I believe that the Attorney General chairing the Cabinet Council on Legal Policy, with its working group on drug supply reduction, I look to the Attorney General as the individual in command of the drug enforcement effort. Now, we do have other entities. We have Carlton Turner in the White House, chairing the White House Oversight Working Group and through that, we have meetings of all of the agency heads involved in drug enforcement, interdiction, as well as the health aspects, and we learn of the President's thinking, what his policies are, through that forum, and then we have the Vice President personally involved in the interdiction effort. And all of us meet regularly and frequently. We do exchange information. I see time and time again this difficulty surface between Customs and DEA, and I can assure you that our degree of cooperation is better than it ever has been, and we are getting along very well.

I think things are coming together well.

Senator BIDEN. You should be in politics. One of the occupational requirements is being an optimist and seeing the bright side of things.

Can the Attorney General in that format that you have, the structural setup, can he say, "You know, the fact of the matter is, there are not enough follow-ups and investigations on Customs cases, and I want more of that done"? Can he say that?

Mr. MULLEN. Exactly. In fact, you have hit right on one of the issues that we discussed just this week, and I have a proposal that is currently with Judge Webster, on its way to the Attorney General, to bring more customs agents into followup investigations through granting of some investigative authority.

Senator BIDEN. So the fact that they have not been done so far is the fault of the Attorney General?

Mr. MULLEN. Oh, I would not say that——

Senator BIDEN. I didn't think you would. [Laughter.]

Mr. MULLEN. Also, DEA has been overwhelmed with these followups, and Senator Biden, some of them are not worthy of followup.

Senator BIDEN. But you must acknowledge that some—we could argue about the number, but you would acknowledge that there are more than several that warranted followup that have not been followed up on, would you not?

Mr. MULLEN. I have to take issue with that. Any that the U.S. attorney will prosecute, any that will lead to prosecution, we will followup with investigation. If it is a minimal amount of drugs, there are other remedies. The Customs Service has the ability to assess a civil fine and take administrative action, so there are other means of following up. If it is a substantial seizure of drugs, DEA will followup in each and every case.

Senator BIDEN. But it must be substantial, as defined by DEA?

Mr. MULLEN. By the U.S. attorney in that area.

Senator BIDEN. Now, you have got to admit, your counterparts used to come up here and say, "You know, one of our problems is that the U.S. attorneys do not want to follow up. We have got hard cases, and they do not want to follow up." I heard that for 5 years, and now, you are telling me that one of the criteria is that if the U.S. attorneys see a need to follow up, then maybe we need to follow up. They have never been known for their vigor—because of staffing problems, because of a whole range of problems. The fact of the matter is, I do not know how many DEA agents over the years have complained to me about the lack of fervor on the part of the Justice Department, in this case, their field operations, the U.S. attorneys, wanting to follow up. Is that your experience?

Mr. **Mullen**. Believe me, under this Attorney General, there has been very vigorous followup in drug cases. That is a priority of the Department of Justice.

Senator **Biden**. Should you have operational control over FBI drug investigations?

Mr. **Mullen**. No, I do not believe we should have operational control over their investigations, nor they of ours.

Senator **Biden**. Why? Isn't that a better way to use resources? You have two separate operations out there.

Mr. **Mullen**. And perhaps it should remain so, Senator Biden. The FBI has many other responsibilities, and we look upon their resources as supplementing what DEA is doing. I do not think we are in any danger, in the short run, in working ourselves out of a job, and the day may come when we will no longer need the FBI resources.

Senator **Biden**. Oh, no, that is not my point. I agree with you, you are in no danger of working either FBI or you working yourself out of a job. But with all due respect, Bud, and it has existed long before you, you are in danger of continuing the same tripping over one another that has occurred in the past.

Mr. **Mullen**. The chairman mentioned earlier the guidelines that we have worked out, and they are good guidelines, they are specific guidelines. I visited DEA offices and found, for example, in one, there were ongoing wiretaps. Two were being manned by the FBI, one by DEA, and we have standards. Say there is an investigation going on, and 14 FBI agents are involved, and 5 DEA agents, and that is supervised by the FBI, and conversely, it would work the same way should DEA have the majority of resources. We are complementing each other.

I wish you could visit some of the offices yourself to see how they have come together with a mutual respect for each other's professional——

Senator **Biden**. I guarantee you I will. That is a promise. I can assure you I will. And I would really appreciate it if you would be willing to, since you may not have had time to go into it in detail, take a look at the recent GAO report and for the record, make comments, if you will, as to whether or not you believe it is accurate or inaccurate.

Mr. **Mullen**. The recent GAO report, I have read, and DEA has commented on the report. It should be included.

Senator **Biden**. Has the Department of Justice, to the best of your knowledge, commented?

Mr. **Mullen**. Right, the Department has commented on it.

Senator **Biden**. I see the amber light going on, which means that we are both saved for another round. Anyway, I would like to pursue that issue with you more—wait, there is no one here. I will keep right on going. No, you are not saved.

Mr. **Mullen**. I have been looking around, hoping somebody would walk in. [Laughter.]

Senator BIDEN. All right. How does DEA establish its enforcement priorities? Is it done on the basis of major drugs of abuse, or major trafficking targets? How do you establish your priorities?

Mr. MULLEN. Both ways. What we do to establish priorities with which drugs will be pursued is, we let the local field division assess their problems locally, because problems do vary in different parts of the country. For example, the main problem in New York City is heroin. In Miami, Fla., it would be cocaine and marihuana. And based on that input from the field, we can then do a national assessment of the drug problems and how they vary around the country, and then, investigatively, we try to target the networks, the higher ups, the financiers, the organized crime involvement. That is where we are trying to direct our efforts.

On occasion, you have to start at the street level and work your way up, but our goal is the very top, both nationally and internationally.

Senator BIDEN. Now, let us take New York. We all agree, and you certainly know better than I, that heroin is the problem—I mean, there are many problems, but that is the biggest concern. Now, do you target families? We know darned well who some of the families are that are the major traders, if you will, in that commodity. Do you target the families, or do you work on specific cases, or both?

Mr. MULLEN. By families, we are talking about organized crime families?

Senator BIDEN. Organized crime families, yes. I beg your pardon.

Mr. MULLEN. We are well aware, through informant information, through court-authorized wiretaps, that the organized crime families are involved in drug trafficking, so yes, we do target those families. On occasion, there will be something like a "cold hit" by customs on heroin coming in, in coffee urns for example, and then we will proceed on the basis of that information with the drug investigation.

We know, for example, or at least, we believe, that organized crime in New York is responsible for about 85 percent of the heroin coming in, so naturally, we have targeted the organized crime families in New York for investigation.

Senator BIDEN. How does that approach or philosophy fit with the task forces?

Mr. MULLEN. The 12 organized crime drug enforcement task forces?

Senator BIDEN. Yes.

Mr. MULLEN. We have cases—the same philosophy would apply, basically, to the task forces to go after the organized elements, the financiers, the organized crime elements involved in drug trafficking. And I am not just talking about the LCN——

Senator BIDEN. Help is on the way, but I am not sure you are going to want it. [Laughter.]

Mr. MULLEN [continuing]. But about motorcycle gangs and other organizations, and that is exactly what the goal of the organized crime task forces call for, Senator Biden, dedicated resources to drug enforcement. You can always guarantee that the drug agents will work drugs full time, but other agencies have other responsibilities. These are dedicated resources.

Senator BIDEN. We have prepared a categorized list of questions for which you can later supply answers.

[Subsequent to the hearing, the committee received the following information:]

Senator Biden's Questions

I. Strategy and Role of DEA

Question 1:

How do you define DEA's role as the "principal agency for drug enforcement" as stated in the 1982 Federal Strategy for the Prevention of Drug Abuse and Drug Trafficking?"

Answer:

Please see the "Assessment of Drug Trafficking" (6/15/83) provided to the Committee on the Judiciary for a thorough analysis of the DEA role in the implementation of the Federal Strategy for the Prevention of Drug Abuse and Drug Trafficking.

Generally, with regard to supply reduction efforts, DEA channels its activities into six broad areas: investigation, interdiction, international programs, diversion control, domestic marijuana eradication, and related support programs such as training, intelligence and forensic laboratory support and analysis. DEA is the sole United States agency with the authority to investigate drug trafficking overseas. The regulation and monitoring of the "closed distribution" system of licit drug manufacture and distribution is vested only with DEA.

Also, although more limited, DEA is also involved in various demand reduction activities, notably the DEA/FBI Sports Program, and the educational services provided through the Public Affairs Staff drug abuse prevention program.

Each of these functions is described in the Federal Strategy. No other agency has such diverse responsiblities with respect to the total implementation of the Federal drug control effort. DEA is the principal agency for drug enforcement and at the forefront of the United States international drug control program.

Question 2:

What are DEA's primary mission and enforcement priorities and how do they coordinate with the responsibilities of the Organized Crime Drug Enforcement (OCDE) task forces, the National Narcotics Border Interdiction System (NNBIS) and the FBI?

Answer:

As the principal Federal drug law enforcement agency, it is DEA's mission to immoblize major drug trafficking networks by investigating these organizations to ensure their conviction and subsequent incarceration, by seizing and forfeiting their assets, and by removing illicit drugs from the market.

The Organized Crime Drug Enforcement Task Forces (OCDE) have also been mandated to investigate the highest levels of the drug trafficking. However, there are also other criteria which are considered in case selection. Most importantly, OCDE cases should be those which would clearly benefit from the investigatory expertise of more than one agency. Second, cases should fall into one of the following categories: traditional organized crime, non-traditional organized crime (e.g., motorcycle gangs), financial flow, major international organizations, high geographical impact, corruption.

Thus, DEA's and the OCDE's objective are nearly the same--to reach the highest levels of the drug traffic. There may be some cases where a criminal organization is involved only in drug trafficking, and the investigation does not require the expertise or jurisdiction of another agency; that case would become a DEA investigation. Another criminal organization may be involved in a multitude of criminal activities, one of which was drug trafficking; that could become an OCDE case. The OCDE case selection and management process ensures that there is the necessary coordination between DEA and OCDE investigations.

DEA, FBI and OCDE cases are investigative in nature. The Narcotics Border Interdiction System (NNBIS) cases are interdiction oriented, a fundamental difference. NNBIS will complement but not replicate the work of the regional OCDE Task Forces.

The U.S. Customs Service and the U.S. Coast Guard are the lead agencies in NNBIS. DEA has a support role. DEA will continue to provide intelligence that will enhance the interdiction effort. Further, DEA will continue to follow-up on interdiction cases, including those generated by NNBIS, as well as those initiated by Customs or the Coast Guard. It is possible that a follow-up investigation could eventually develop and meet the criteria to become an OCDE investigation. This limited requirement for coordination can be handled through established management channels.

Question 3:

Should the DEA Administrator have operational control over FBI drug investigations? Wouldn't this make for a better utilization of field resources?

Answer:

The DEA Administrator does not need to have operational control over FBI investigations. There are many cases in which drugs are but one part of the overall investigation being conducted by the FBI. It would be very difficult and a poor management practice to have the FBI isolate that part of its investigation which involves drug offenses. The current coordinating mechanisms, field and headquarters liaison, use of guidelines, etc. are working well. Centralizing control of all drug investigations at DEA would not enhance resource management. There is no duplication of effort or resource expenditure at the present time. The work of the DEA and the FBI complement each other.

Question 4:

Should the drug investigative work of all Federal agencies be coordinated by DEA?

Answer:

There is no need for all drug investigative work to be coordinated by DEA. Such investigations at the Federal level are now conducted only by three entities: DEA, the FBI, and the OCDE Task Forces. As described above, there are no coordination problems involving cases initiated or managed by any of these organizations which would substantiate the need to have the investigations controlled by DEA.

Question 5:

How does DEA establish its enforcement priorities; is this done on the basis of major drugs of abuse or major trafficking targets?

Answer:

DEA has established national priority objectives, the first of which is to "Commit DEA investigative resources to the highest levels of the traffic, with priority emphasis by drug to be formulated on a localized basis." This objective is further explained to mean that investigative resources will be primarily directed against multi-jurisdictional and international drug trafficking networks and organizations. Localized drug priorities are based on (1) the risk potential to the individual user; (2) user prevalence and demography; (3) the socio-economic impact of drug abuse and trafficking; and (4) the role of the particular area in national and international trafficking patterns.

Based on input from DEA field offices, a national assessment of the drug problems and how they vary around the country is then developed. From that, DEA then targets for investigation the networks, the higher-ups, the financiers, and the involvement of organized crime.

Question 6:

What is DEA's measure of success in reducing the availability of the major drugs of abuse (heroin, cocaine, and marihuana)? What level of availability would be acceptable? Does DEA have a strategy to realistically achieve those goals?

Answer:

DEA does not have a single indicator to measure success in reducing drug availability. Rather, there are several interrelated indicators: drug-related deaths and injuries, price/purity data, arrests and convictions by class of violator, number and location of drug seizures and the amount of the drugs seized, asset seizure and forfeiture, etc.

There is no "acceptable" level of drug availability; any illicit use of drugs is "unacceptable." To work toward the long-range goal of eliminating all drug abuse, the United States has a multi-faceted approach, described in the "Federal Strategy for Prevention of Drug Abuse and Drug Trafficking." DEA's overall strategy is contained in this Federal blueprint. DEA efforts are focused on: International Cooperation, Drug Law Enforcement, and Education and Prevention. The other two elements of the Strategy are: Detoxification and Treatment, and Research. Based on these broad objectives outlined in the Strategy, DEA then plans and develops more specific programs and initiatives to implement these goals. DEA's specific strategies are outlined in many documents, including our budget submissions.

Question 7:

How will DEA's participation in the Organized Crime and Drug Enforcement Task Force Program impact upon ongoing DEA operations and investigations?

Answer:

DEA's participation in the OCDE program is having a positive impact on the agency's operations as a whole. The OCDE program is providing the first real infusion of resources to the drug law enforcement program in about a decade. The OCDE program is responsible for a 25 percent increase in the number of agents devoted to drug enforcement work. This program is also enabling us to proceed with enhancements to the ADP programs, for the DEA Air Wing, for enhanced communications equipment, and for sophisticated equipment needed for court-authorized electronic surveillance.

Furthermore, as an unanticipated consequence of the national attention directed toward the OCDE program, all Federal law enforcement programs directed toward organized crime and drug trafficking have been the subject of renewed interest and public support. This refocusing of attention on all DEA programs is having a very positive effect.

Question 8:

What will be the role of DEA in the National Narcotics Border Interdiction System program to be headed by Vice President George Bush and what additional funds will be needed by DEA to participate in the program?

Answer:

The National Narcotics Border Interdiction System (NNBIS), headed by Vice President George Bush, was developed to coordinate all Federal efforts to interdict the flow of narcotics into the United States. As interdiction is the primary responsibility of agencies other than DEA, this agency has a support role in the NNBIS initiative. DEA will provide intelligence to the appropriate NNBIS units to enhance interdiction activity. DEA will also conduct follow-up investigations pursuant to standard operating procedures for following up interdiction cases.

More specifically, the DEA Administrator participates on the NNBIS Coordinating Board, which is composed of ranking officials from the Departments of State, Defense, Treasury, Justice, Transportation, Central Intelligence Agency, and their subordinate agencies and offices. NNBIS has six regional centers to accomplish the following tasks: collate intelligence; assess threats; prioritize targets; identify resources; recommend actions; follow-up seizures; maintain, analyze and report statistics; and coordinate joint and special operations. In each of the six regional centers (New Orleans, El Paso, Long Beach, Chicago, New York, and Miami), DEA has a senior Special Agent assigned to the Operations Information Center, and an Intelligence Analyst assigned to the NNBIS intelligence staff.

No new additional appropriations are being sought for the current operations for the NNBIS program. Accordingly, each participating agency will absorb NNBIS expenses in its current appropriation.

II. Task Force Programs

DEA seems to be in the middle of several Administration efforts to augment the national war on drugs. The Organized Crime and Drug Enforcement (OCDE) Task Force Program is being implemented in 70 U.S. Attorney Districts. The South Florida Task Force continues using DEA resources. The Organized Crime and Drug Enforcement Task Force Program does not cover South Florida, although many of the large crime organizations being investigated by the other task forces may have Florida connections. Now, the Administration is forming new task forces--the National Narcotics Intelligence Border Interdiction System (NNBIS), to be administered separately from the task force program.

Question 1:

As the Administrator of DEA, do you have a role in assuring that these efforts are coordinated?

Answer:

As DEA is at the forefront of all Federal drug investigative efforts, the DEA Administrator has a central role in ensuring that all Federal drug law enforcement initiatives are coordinated.

The DEA Administrator, the nation's chief drug law enforcement official, with the FBI Director, have regular access to the Attorney General and the Associate Attorney General. In the course of planning and executing major drug control initiatives, the Attorney General relies heavily upon the DEA Administrator for guidance and input regarding drug law enforcement initiatives. Interagency coordination of activity is one element that is considered in all such instances.

The DEA Administrator is also a member of the White House Oversight Working Group (OSWG) chaired by Dr. Carlton E. Turner, Special Assistant to the President for Drug Abuse Policy. The OSWG serves as an important policy setting mechanism and is one forum which provides for two-way communication about the President's drug policies. The OSWG also is a forum through which other coordinating mechanisms and procedures for inter-agency activity are established to ensure that there are no conflicts in goals or procedures between various enforcement initiatives like the OCDE Task Forces and NNBIS.

Additionally, as described above, the DEA Administrator has also been involved in the establishment of the OCDE Task Forces, and is a member of the NNBIS Coordinating Board.

Question 2:

How much money is to be spent on National Narcotics Intelligence Border Interdiction System and where will these funds come from? (Note: In March, Meese indicated that funds would come from the Task Force Program, but this is not the case according to Justice officials.)

Answer:

Please also see the response to question I. 8. above. DEA is incurring salary expenses for 12 individuals assigned to the NNBIS regional offices--one Special Agent and one Intelligence Analyst for each of the six offices. It can reasonably be expected that the NNBIS program will generate a significant increase in the number of cases that require follow-up investigation. It can thus be anticipated that DEA will expend resources to conduct those additional investigations. As the NNBIS program is now just getting underway, it will be several months before DEA can determine the extent to which the NNBIS program will impact on its investigative resources.

Question 3:

What guidelines have been planned between the National Narcotics Intelligence Border Interdiction System and the Organized Crime and Drug Enforcement task force operations?

Answer:

As described above (I. 2.), the purpose of the Organized Crime Drug Enforcement Task Forces is to conduct long-term investigations directed at the upper-echelons of organized crime and drug trafficking networks. NNBIS's aim, on the other hand, is to curtail smuggling by means of an enhanced, accelerated interdiction program. As there will be minimal, if any, direct interaction between these two programs, formal guidelines are not needed. Follow-up investigations required pursuant to NNBIS seizures will be conducted by DEA in accordance with standard operating procedures and guidelines for following up an interdiction case.

Question 4:

Can we be sure there is an efficient exchange of information and a cohesive attack is being developed between these programs in an effort to attack large scale drug trafficking organizations?

Answer:

NNBIS does not require the information and intelligence which supports the OCDE Task Forces. The primary activity of the NNBIS initiative--interdiction--does not depend upon information about high-level drug trafficking organizations to be effective. Thus, NNBIS does not need information about OCDE targets, but rather intelligence to target the actual drug smugglers. The El Paso Intelligence Center (EPIC) is currently the point through which tactical (operational) drug intelligence is exchanged. EPIC will continue to be the appropriate mechansim to ensure that drug trafficking information is properly and efficiently exchanged.

III. State and Local Training

Question 1:

Given tight budgets, has DEA been able to maintain its two-week Basic Training School for state and local narcotic enforcement officers? How many schools have been held annually from 1980 through 1983 to date?

Answer:

DEA has continued to hold its two-week Basic Training Schools for state and local narcotic officers. The number of these two-week schools is as follows:

FY 80	51
FY 81	58
FY 82	31*
FY 83	48 to date

*Reorganization of DEA field elements

Question 2:

Also have budget constraints prevented DEA from continuing its highly regarded 10-week advanced narcotic training school for state and local narcotic enforcement officials? How many have been held from 1980 through 1983 to date on an annual basis?

Answer:

Similarly, DEA has continued to hold the advanced narcotic training schools for state and local officers, although the program is presented in an eight-week academy. The number of these academies is as follows:

FY 80	2
FY 81	1
FY 82	2
FY 83	1 to date

In addition to the Basic and Advanced Training schools provided for state and local officers, DEA has conducted a number of one-week schools related to the Domestic Marijuana Eradication Program. In 1982, four schools were held; Georgia, Oklahoma, Washington State and Virginia. In 1983, 17 schools will be conducted across the United States. In addition, a number of one-day seminars are being conducted in several areas. Approximately 800 state and local officers will have been trained in the locating and eradication of marijuana plots by the end of 1983. DEA is also providing course material to states which are conducting their own training programs.

DEA will continue to support state and local officers through extensive programs taught by DEA Division Training Officers in the field, at the Federal Law Enforcement Training Center in Glynco, and at the FBI National Academy in Quantico.

IV. Reorganization

Question 1:

At a time when it would appear all available DEA Special Agents should be assigned to drug enforcement investigations, we are told that some are being assigned to administrative support positions traditionally held by non-Special Agent employees. This is said to be an FBI policy to have all technical and administrative positions assigned to Special Agents. This seems to us to be a waste of Special Agent enforcement resources. Could you please comment?

Answer:

It should first be recognized that when DEA reorganized in July 1982, one of the primary considerations in dismantling the regions was the release of Special Agents from administrative and support functions, such as planning and evaluations staffs as well as the inspection service, and centralizing those operations in Headquarters where professional/technical staff could assume some of those tasks. Thus, in each region, DEA was able to return Special Agents back to drug investigative work.

DEA has recently added two managerial positions in the Operational Support Division, which is responsible for administrative matters. Supervisory Special Agents were chosen to fill these positions. These selections coincide with and are a part of the implementation of DEA's Special Agent Career Development Program, which has been designed, in part, to develop a cadre of well-rounded managers for both DEA field and headquarters operations. Potential managers, from the group supervisor level through and including Special Agents in Charge, need training and experience in all aspects of managing a drug law enforcement program, and this includes administrative matters. Historically, DEA and the FBI, have used management-level supervisory Special Agents for some headquarters staff functions. The utilization of agents in these two new positions does not diminish the number of agents available for investigations.

V. Staff Allocation

On March 30, 1983, DOJ issued staff allocations for DEA agents at the 12 task forces, based on DEA recommendations. It was surprising to see that DEA and other agency resources were scattered throughout the nation--in as many as 66 different U.S. Attorney districts. In addition to the 12 core cities, DEA has allocated agents to smaller locations such as Springfield, Illinois; Mobile, Alabama; and Shreveport, Louisiana.

Question 1:

How did DEA determine where agents should be located?

Answer:

In February 1983, DEA Special Agents in Charge were asked to identify the number of Special Agents they felt were necessary to handle the cases they had identified as potential OCDE cases. Later in that month, DEA management staff and their FBI counterparts reviewed the recommended agent allocation for both agencies to make certain that the number of FBI and DEA Special Agents complemented each other. With some minor exceptions, the Department of Justice's March 30, 1983 allocation closely paralleled the agent lists prepared by DEA and the FBI, and was mutually acceptable to both agencies.

Question 2:

Does this mean that each district is carrying out their own investigations separate from the core-city concept originally proposed?

Answer:

Each office to which DEA has assigned OCDE agents is, in fact, conducting its own high-level investigations. The original OCDE concept included non-core cities as well as core cities as vital elements in the OCDE program. The assignment of agent personnel to non-core cities provides the task forces with maximum coverage across the United States and also affords a flexibility to meet the ever-changing trafficking patterns and movements of sophisticated drug trafficking organizations.

When the case review process began in February 1983, each of the non-core cities also submitted cases which they believed met the OCDE criteria. (Under DEA's classification, all such cases were either a Class I or II.) Thus, non-core cities have been involved in case selection since the initiation of the program. Currently, the OCDE agents in the non-core cities are working on independent OCDE cases, "spin-off" cases from other OCDE cases (from either core or non-core cities), or are working on investigations that hold promise of expanding into an OCDE cases involving their district or other districts.

Question 3:

Was there any attempt to review proposed task force cases before decisions were made where agents would be located?

Answer:

DEA Special Agents in Charge and Headquarters personnel did review the proposed DEA OCDE cases before decisions were made on the location and allocation of the task force agents.

Question 4:

I would expect that many of these cases are related--given the nature of the large crime organizations that are to be the targets of this program. How will district agents coordinate with other task forces and other districts to build larger cases?

Answer:

For the most part, the drug trafficking and criminal organizations being investigated in the OCDE program are acting independently of each other. What interrelationships may exist are not known to the traffickers themselves. That is, DEA and the OCDE task forces are aware that in several instances the foreign source of the drug or the first-line distributors in the United States are providing drugs to several organizations. However, the traffickers themselves are unaware of these connections.

In each of the 12 core cities, DEA has assigned a full-time GM-14 OCDE Task Force Coordinator who is responsible for ensuring that the related cases are coordinated, that new cases meet DOJ criteria and that DEA provides maximum support and assistance to task force operations. The coordinators meet regularly with all agents in the core and non-core cities who are working on OCDE investigations. The coordinators, in turn, advise their respective SACs and AUSA Task Force Coordinators on all aspects of the task force operations in which DEA is involved.

Furthermore, the DEA drug "desk" coordinators work to ensure that matters are coordinated among the OCDE task forces, DEA/FBI cooperative cases and unilateral DEA cases.

Question 5:

In the event that there is no major case at a particular DEA task force location, would these agents be moved? How will this work? Would the task force slots be reassigned to another location?

Answer:

Under the OCDE Guidelines, experienced senior investigators located in core and non-core cities have been designated as OCDE agents. The number of agents in each task force was determined by the number and type of cases submitted for OCDE approval. Since agents were assigned to particular cities based on identified cases, we do not envision any agent reassignment at this time. Furthermore, since the OCDE cases are targeted at high-level organizations, we expect the cases to take a considerable amount of investigative time. Therefore, any changes in the near future would be restricted to minor reallocations approved by the Department.

In the long-term, agents and slots would be reassigned if there were no OCDE cases at a particular DEA task force location. Our current financial plan for the OCDE program provides funds to cover these kinds of permanent changes of station (PCS) as needed and as appropriate.

Question 6:

When do you expect the full complement of new agents will be hired and on duty?

Answer:

As of June 25, 1983, DEA has hired 167 new Special Agents to backfill the 274 positions allocated under the OCDE program. This number includes agents who have graduated from classes this calendar year as well as those currently in training. In July and August, DEA expects to enroll two classes, each comprised of 30 candidates. In September, DEA plans to enroll two classes of similar size. Consequently, DEA expects to hire the full complement of 274 agents to backfill the OCDE positions by September 30, 1983.

Each Basic Agent Class runs 12 weeks; therefore, the last class enrolled in September will not graduate until the end of December. Graduating agents have 120 days to report to their first post of duty. While most new agents will report well before this date, this last class of agents and hence the last to backfill OCDE positions will technically not have to be on duty until April 1984.

VI. Targeting of High Level Trafficking Organizations

Question 1:

DEA is a key participant in the Organized Crime and Drug Enforcement (OCDE) Task Force Program, which has the major objective of destroying the highest level drug trafficking organizations in the U.S. Has this program changed DEA's ability to target and investigate these high level organizations?

Answer:

The OCDE Task Forces can engage in comprehensive targeting because independently known activities, reflecting a spectrum of criminal activity, are brought together from many sources. No one agency may have a significant case, but the totality of information may suggest that a criminal organization is more significant in scope than previously believed. As a result, more organizations involved in drug trafficking can be investigated. This only enhances the Federal drug enforcement program.

Although DEA is committing resources to the OCDE program, in no way have our targeting capabilities been diminished. DEA's targeting ability has been, in fact, enhanced by the OCDE effort. Criminal organizations involved in drug trafficking may not be deemed appropriate OCDE targets, but instead DEA targets. The preliminary targeting by the OCDE task force, however, brings together important background information which then supports DEA's investigative effort.

Question 2:

Has there been a change in the level of cases DEA task force agents are investigating? What standards are being used to determine which cases should be task force cases? Are these all Class I cases?

Answer:

DEA continues to strive to investigate the highest level possible of drug trafficking organizations. There has been no diminution of results with regard to levels of cases and defendants arrested by DEA and the FBI.

A case is selected for OCDE investigation if it would benefit from the expertise of more than one agency, and if it falls into one of the following categories: traditional organized crime, non-traditional organized crime, financial flow, major international implications, high-geographical impact, or corruption of public officials.

It is conceivable that in some jurisdictions, an OCDE case may not be Class I drug traffickers, but represent instead the most serious drug trafficking/criminal organization in that district. The OCDE Task Forces view an organization in its entirety and do not use the DEA G-DEP system as a sole criteria because these organizations are not pure drug trafficking organizations. For example, an organization may only be a Class III drug organization, but their other criminal involvement may make them an appropriate OCDE target. Therefore, DEA agents participating in an OCDE Task Force may be directing their efforts at a lower level drug investigation than if their efforts were strictly at DEA's behest. However, based on our experience to date, DEA agents working in the OCDE core cities are working Class I and II investigations.

Question 3:

What targeting activities were conducted to assure that task forces identified the highest organizations?

Answer:

The OCDE targeting and case selection process has been evolving. Initially, all ongoing or potential cases were reviewed by each of the participating agency's field managers, who then submitted his recommendations to his United States Attorney. The cases were then submitted to the OCDE reviewing unit at the Department of Justice. Simultaneously, cases were also being reviewed at each agency's headquarters. Cases were then selected based on the criteria described above. At each step of this methodical review and selection process, care was taken to assure those organizations selected for the OCDE investigation were involved at the highest levels. OCDE case targeting and selection is now being managed by the core city coordinators.

Question 4:

Are you satisfied that task forces are investigating the highest level cases?

Answer:

Yes. Every jurisdiction is working the top four drug cases that meet the OCDE criteria for case selection. DEA continues to work the highest level cases of the drug traffic, some of which may not be OCDE cases because they are "pure drug cases"; that is, the expertise of other investigating agencies is not needed to successfully investigate the case.

Question 5:

Are there differences among the organizations targeted in the core city districts and those in the 58 other districts with task force cases?

Answer:

There are differences among the organizations targeted in the core city districts and those in the 58 other districts; however, the differences are not qualitative. All of the OCDE cases which DEA proposed involve Class I and II violators whether they are in core cities or non-core cities. Some of the cases differ in the types of drugs trafficked and in the means by which the drugs are trafficked and financed. While the cases may differ from one geographic region to another, DEA's participation in all of the cases is consistently at the Class I and II level according to the DEA G-DEP system.

Question 6:

Are DEA resources supplemented by FBI and Treasury resources on all task force cases? How many are limited to DEA and FBI only?

Answer:

FBI and Treasury resources are not involved in all task force cases. At the Core City Coordination Committee level, all of the agencies participating in the OCDE program review the cases and assign personnel with the necessary expertise as needed. At the beginning stages of an investigation, only one or two agencies may be involved. As the investigation progresses, there may be a need for a Title III or an independent financial investigation at which time FBI and IRS agents would be assigned. The AUSA Task Force Coordinator in the core city actively participates at the early stages of the investigation and thus can assist the other agencies in determining the appropriate time for the assignment of additional personnel to the case.

It is difficult at this time to give an exact number of OCDE cases that are limited to DEA and FBI only because of the flexibility which the AUSA Task Force Coordinator and the other agency task force coordinators have in assigning additional personnel to particular investigations. In non-core cities where Treasury resources were not allocated, the OCDE cases will involve DOJ resources exclusively. However, there may be instances where

Treasury has decided to assign non-task force agents in these non-core cities to assist DEA and the FBI in a specific OCDE investigation. As the program progresses and as soon as DOJ institutes its computerized OCDE case reporting and tracking system, specific data on the extent of the various agencies' participation in the OCDE investigations should be available.

VII. Monitoring and Evaluation

There has been some confusion about the ultimate goals of the task force program--and its similarities or differences from the South Florida Task Force Program. I believe it is important that we set specific goals from the outset, and see that we are collecting the kind of information that will tell us how well this program is working.

Question 1:

Can you give us a statement on the objectives of the task force program? Do you expect to have an impact on drug availability, price, purity? Are these the measures we should use to evaluate this program? Should we evaluate it any differently than normal DEA operations?

Answer:

The Guidelines for the Organized Crime Drug Enforcement Task Forces issued on January 20, 1983, state:

"The Drug Task Force program's overall goal is to identify, investigate, and prosecute members of high-level drug trafficking enterprises, and to destroy the operations of those organizations. The program is designed to achieve this goal by two means:

- Adding new federal resources for the investigation and prosecution of major drug trafficking organizations.

- Fostering improved interagency coordination and cooperation in the investigation and prosecution of major drug cases.

Among the specific objectives of each Task Force will be:

1. To target, investigate, and prosecute individuals who organize, direct, finance, or are otherwise engage in high-level illegal drug trafficking enterprises, including large-scale money laundering organizations;

2. To promote a coordinated drug enforcement effort in each Task Force area, and to encourage maximum cooperation among all drug enforcement agencies;

3. To work fully and effectively with state and local drug enforcement agencies; and

4. To make full use of financial investigative techniques, including tax law enforcement and forfeiture actions, in order to identify and convict high level traffickers and to enable the government to seize assets and profits derived from high-level drug trafficking."

Meeting these objectives will result in the seizure of large quantities of illegal drugs and traffickers assets and will bring about a major disruption in large scale drug trafficking organizations. We, therefore, expect to have a significant impact on drug availability in this country as measured by our standard price/purity scale.

However, because this program is somewhat unique, other measures may well be more important. The focus in evaluating this effort should be on the investigations themselves--to examine whether, in fact, the highest levels of the drug trafficking are being attacked; that all the Federal resources necessary are being used effectively to arrest and prosecute the violators under all applicable laws; and that the OCDE Task Forces are, in fact, building solid cases, whereby conviction is assured and appropriate sentencing is guaranteed so that the trafficking organizations are permanently disrupted.

Question 2:

What would be your definition of success of the program?

Answer:

If we are able to accomplish all of the objectives outlined in the guidelines and meet the partial evaluation criteria set forth above, DEA's participation in the OCDETF program would be viewed as an unqualified success.

Question 3:

The task force appropriation includes several items in addition to personnel, (e.g. space, equipment, ADP, undercover, etc.). Will these resources be utilized only by the task forces? How will you monitor their use?

Answer:

Because of the system-wide application and integration of some resources, they will be used not only by the OCDE Task Forces, but by all field operations as well. For example, the funds dedicated for the voice privacy installation cannot be limited to only the ODCE Task Forces. Those items that can be charged directly to the OCDE program include investigative manpower, PE/PI, vehicles, and the like. Other expenditures must be prorated because of the integrated nature of the operation. OCDE accounting procedures have been established and agreed upon within the Department of Justice.

The 12 Task Force Coordinators in the core cities are responsible for coordinating this support and ensuring that task force monies are spent only in support of OCDE investigations. On a monthly basis, DEA submits a report of obligations by object class to DOJ for DEA's participation in the OCDETF program. Once the funds are expended in the field, DEA submits a bill to the Department so that the DEA appropriation can be reimbursed. In essence, DEA not only has our own checking and accounting system to ensure that the funds are only spent in support of OCDE investigations, but DEA also has an additional checkpoint in the Department.

Question 4:

Given the delays in allocating and assigning staff, do you expect that the full appropriation will be spent in FY 1983?

Answer:

At this particular time and at the current rate of spending, DEA expects to spend the entire $24 million allocated to this agency under the OCDETF program.

Senator BIDEN. The last question: Do you have enough money?

Mr. MULLEN. Yes. That is what you expected me to say.

Senator BIDEN. Yes, I did. I did expect you to say it, and I am disappointed you said it, because I know you do not have enough money, and I cannot believe you believe you have enough money.

Mr. MULLEN. Can I qualify that?

Senator BIDEN. Yes.

Mr. MULLEN. With the money we have been given under the Organized Crime Drug Enforcement Task Forces, I am concerned—I am sure we will be able to, but I hope we can spend it all by the end of the year, what with the problem of recruiting and so forth, and getting the new agents trained. I do believe we have adequate funding at this time.

Senator BIDEN. But once you have those operations in the field, and you have them all trained, do you think you are going to have enough money?

Mr. MULLEN. I do not know. I would have to reassess and come back at that time.

Senator BIDEN. I sure hope there are some of you in Government, Government appointees, who are prepared to appear in the second edition of "Profiles in Courage" and come up and tell us what you need.

Anyway, I will leave you to the tender mercies of the chairman of the Labor Committee and my good friend, Orrin Hatch.

Senator HATCH. Thank you, Senator Biden.

Mr. Mullen, as you know, I would like nothing better than to be able to support your nomination. I like you personally, and from what I see, you are trying to do a good job with the Drug Enforcement Administration. Unfortunately, I have got to ask a few questions, and let us see what we can do to try and resolve some of the difficulties that did arise.

Now, you testified under oath for days last summer about what you did in the background investigation of Secretary Donovan, the Labor Secretary. Of course, your nomination to become DEA Administrator was before the Committee on the Judiciary at the time, and it was held up as we asked you to explain your conduct, basically on why you said one thing to the Labor Committee in 1981 and another thing to the press in 1982.

Now, there are other issues, but basically, I think that is one of the pivotal issues that I would like to discuss with you.

In 1981, you told the U.S. Senate that "no information of pertinence, not in our FBI background report, was developed" about Mr. Donovan. Now, as far as I am concerned, Mr. Donovan is irrelevant to this discussion, except that these things occurred during that confirmation proceeding before my hearing. I think he has come through this quite well, and I think he has had a lot of guts and fortitude to be able to take the problems that he has taken over the last couple of years. But on that statement, I will tell you that Members of the Senate and members of the committee did rely on what you said at that time.

In 1982, however, you nevertheless admitted to the press that you decided "consciously" not to tell the Senate all that you knew. In our estimation, you did withhold a wiretap reference to Mr. Donovan, that your subordinate, Mr. Adamski, characterized as "pertinent." It was pertinent presumably because alleged mobster, William Masselli, who has been since imprisoned, and Nat Masselli, his son, since killed, discussed a social function that Mr. Donovan allegedly attended with William Masselli.

Now, the FBI guidelines for background investigations require the FBI to inquire closely of the nominees' associations with disreputable persons, and this tape reference, I think, does fall squarely within that investigative category, and yet you withheld it.

Now, I will just say this. I might understand why it might be necessary to avoid any public reference to the tape if Mr. Masselli and others did not know anything about the investigation, but they did know about it by 1981, and it was required by law that the FBI notify them of the wiretaps. Not only the subjects of investigation but also the public knew about the investigation. All except our committee, I suppose. One year before the Donovan confirmation hearing, the Masselli investigation was described in four New York Times stories citing law enforcement sources.

As for the tape reference itself, Adamski, your own subordinate, swore that he told the transition team about it. You had an opportunity to ask for an executive session. You sat here today, and I respect you for saying it, that if there was anything you would have done differently about the Donovan investigations, you would have asked for an executive session at that time, and I agree that that would have been a good thing to do, and I appreciate the fact that you recognize that. But of course, because you did not, the Senate as a confirming body, did not know anything about these things. And of course, the question that was raised with us is why didn't you tell us; was there a good reason for withholding the tape reference? I did not see it. And of course, I take no consolation in the fact that you assume full responsibility for the ultimate decision as you described it last summer, or toward the end of the summer.

So that is a problem. Could you respond to that?

Mr. MULLEN. And the question is why I did not mention the reference, Senator?

Senator HATCH. Right, why did you consciously withhold it from the committee.

Mr. MULLEN. The conscious decision that is referred to is beforehand, not during the testimony, when the overhear was——

Senator HATCH. It was during the early days of the hearings?

Mr. MULLEN. That is right, when information was being furnished to the Senate.

Senator HATCH. Right.

Mr. MULLEN. At that time, Senator Hatch, the FBI was using the established procedure of summarizing information that bore upon the same or similar issues, and there were numerous allegations at that time of alleged social and business ties to organized crime. The tape reference came up, and there was an ongoing investigation at the time, involving some very sensitive cases, some sensitive individuals. I, when I testified, was not aware of any newspaper articles that had been published—in fact, was not aware of them until——

Senator HATCH. I wasn't, either.

Mr. **Mullen** [continuing]. Until you made me aware of them during one of our hearings. I do concede that the word, "pertinent," perhaps is not a good word, because if it was the nominee, and his name came up, and then it pertains to him, then it is pertinent. It was a judgment at the time that it did not add anything, that it would not add significant weight to that which had already been furnished.

That was the conscious decision. There was no sit-down, Senator Hatch, and say: "Let's withhold this from the committee." We do not think that way. We do not talk that way. There was no such discussion. The discussion was, "Is it necessary to send it in view of this other investigation?"

As I indicated to Senator Kennedy, in view of what has transpired, the confusion that has been caused, I would handle it differently today.

Senator **Hatch**. Well, it is no secret. I have brought up a number of issues here, but let me just say this, that the transcript of your testimony is public, and I would commend it to members of this committee. I would like not to repeat any questions that we asked you last year. During your testimony, I said, I understood how, in isolation from other events, you might have said or done one or other of the things you said or did. Now, following your testimony and that of Mr. Adamski, however, I learned, when you requested a search of the New Jersey wiretaps showing nothing, I discovered that the FBI had not given the Labor Committee other information for almost 2 years after Mr. Donovan's confirmation and after your testimony. I am talking about the "Big J" information which was extremely—well, to me—critical information.

In short, I considered the entire record; I had to agree with my special counsel's critical report of what happened and of your conduct in the matter. And again, I will commend to my colleagues the special report that we did file.

Now, I think what I would like to do is direct your attention to your prepared statement in January 1981. You told the Labor Committee that the New Jersey wiretap showed nothing about Mr. Donovan or his firm but you did not tell us about the New York wiretap—that I think you knew very well did refer to Mr. Donovan. Now, isn't that correct? You talked about New Jersey, but you did not tell us about the New York wiretap, which did in fact refer to Donovan?

Mr. **Mullen**. I think it is clear that we did not mention the Masselli overhear at the hearing. That is correct.

Senator **Hatch**. Well, the question is, did you consciously decide not to tell the committee about the Masselli wiretap reference to Donovan in the New York wiretap.

Mr. **Mullen**. I am sorry, Senator Hatch?

Senator **Hatch**. Do you feel you consciously withheld from the committee the New York wiretap and the reference to Donovan that you knew about at the time you acknowledged that there was a New Jersey wiretap.

Mr. **Mullen**. And the question here is——

Senator **Hatch**. Did you consciously withhold the New York wiretap evidence from the committee?

Mr. MULLEN. No. The conscious decision was that it did not add anything to the information we had already furnished. As I mentioned earlier, we used the traditional practice at that time of furnishing summaries of information received, and there were allegations of organized crime ties, and those were mentioned in the material we did submit to the committee.

Senator HATCH. So you are saying, when I asked you the question back last summer, did you state also, as reported in the Washington Post of June 6, 1982, that—it is the first sentence of that No. 2 paragraph—"I made that decision consciously."

Your answer was: "I did make that statement also, but—" and then, question, "You did or did not?"

Answer: "I did make that statement to the press."

[The following excerpt of Mr. Mullen's testimony was received for the record:]

> Senator HATCH. I can't imagine that that would be in the province of a special prosecutor. I am sure that everything is in the province of a special prosecutor, but I can't imagine that that would be in the province in such a way that it could not be given to us.
>
> So, if you can, give it to us. You know, if you cannot, tell us why. OK?
>
> Mr. OLSON. That will be fine.
>
> Senator HATCH. OK.
>
> By Senator HATCH.
>
> *Question.* Did you state, as reported in the Washington Post, in an article of June 6, 1982, in the second column, second paragraph, the middle of the second paragraph, where it is marked two there, quote: "I didn't want to open up that whole area, because in my judgment that conversation was not pertinent," unquote? Did you say that to Mr. Lardner?
>
> Answer. I believe I said that, Senator Hatch.
>
> *Question.* Did you state, also as reported in the Washington Post of June 6, 1982, that, quote—it is the first sentence of that number two paragraph: "I made that decision consciously," unquote?
>
> Answer. I did make that statement also but——
>
> *Question.* You did or did not?
>
> Answer. I did.
>
> *Question.* You did.

Mr. MULLEN. We are referring now to the conscious decision in furnishing the information beforehand to the committee that it was not—it did not add anything; in fact, it may be redundant in information we were furnishing.

Senator HATCH. You are talking—you specifically decided not to tell us about the Masselli wiretap?

Mr. MULLEN. I am sorry—again.

Senator HATCH. Did you consciously decide not to tell us about the Masselli wiretap at that time?

Mr. MULLEN. Yes. It was a conscious decision not to furnish that information ahead of time, but——

Senator HATCH. And you made that decision.

Mr. MULLEN. Well, I made it, but I had much input from others.

Senator HATCH. From whom?

Mr. MULLEN. Well, at this time, it is difficult to recall the names of everybody I talked to, but——

Senator HATCH. Were these all subordinates, or were they people——

Mr. MULLEN. Subordinates, Senator Hatch.

Senator HATCH. In the FBI.

Mr. MULLEN. That is correct.

Senator HATCH. Anybody outside of the FBI?

Mr. MULLEN. No, sir.

Senator HATCH. Now, you testified that the "ultimate decision" was yours; isn't that right—on that matter?

[The following excerpt of Mr. Mullen's testimony was received for the record:]

> *Question.* Who was necessary to make the decision not to mention any tape reference, any of the Masselli tape references to the Committee?
>
> Answer. Whose authority?
>
> *Question.* Who made the decisions?
>
> Answer. The ultimate decision would have been mine.
>
> *Question.* So, you made it yourself that you should not mention the Masselli tapes to the Committee or that we should not be given the January 12 memorandum?
>
> Answer. With regard to the January 12 memoranda, if I could take that first, it is not normal practice to furnish internal memorandum as part of documents in a special inquiry case. We have used the summary format.
>
> *Question.* But we didn't even get the summary format in the committee. See, we didn't even get the one that you gave to Mr. Fielding.
>
> Answer. That is my understanding now. I did not know that at the time.
>
> *Question.* Did you feel that was the White House's responsibility, whether or not they gave us that memorandum, Mr. Fielding's responsibility?
>
> Answer. By way of established procedures, that would have been the normal course, for the item to be furnished to the transition team and then to the committee.

Mr. MULLEN. That is right. I was in charge of all investigative activities.

Senator HATCH. You see, that is what bothers a lot of the people on our committee, that you consciously withheld information that really was important.

Let me give you an illustration——

Mr. MULLEN. Well——

Senator HATCH. Go ahead. I did not mean to interrupt you.

Mr. MULLEN. That was a judgment I made at the time.

Senator HATCH. I understand.

Mr. MULLEN. And I know when you go back and look over someone's testimony and put it under a powerful microscope and have the advantage of full hindsight, you can look at things differently. And as indicated, it may not have been the right judgment, but that is exactly what it was. At no time, Senator Hatch, did I ever consciously say: "I am going to withhold pertinent information from the committee." I just did not do that and would not do that.

Senator HATCH. Well, but you know, if you think about it, isn't that in effect what you did? You withheld very pertinent information from the committee at a time when the committee was considering marking up the nomination of Mr. Donovan.

Mr. MULLEN. I concede, in reviewing the record, it may appear that way, and I can see why you are concerned, but I tell you at the time, the judgment was that it was not necessary, did not add anything to the substantial information we had already furnished.

Senator HATCH. Well, you received this Masselli tape information on January 11, 1981. On January 12, Donovan appeared before the committee; we did not have any information then about Masselli; we did not have any information about "Big J" not then and not until after you testified last summer. We found out about Big J—about mob contacts, being mobbed-up, and the other things more than 1½ years later.

Mr. **Mullen**. Yes. I think we should keep in mind, too, Senator, that my responsibility as Executive Assistant Director included the overseeing of an extensive number of investigations, 86,000 in all, at the time, and others were charged with liaison with the transition team and with the committee, and a lot of information was exchanged at that level. It was not always my responsibility to furnish information to the committee or to the transition team.

Senator **Hatch**. But you were advised of the Maselli information by the time you sent us a letter of January 14 pertaining to Mr. Picardo; isn't that correct?

Mr. **Mullen**. I do not know when I was advised of the information.

Senator **Hatch**. You received the Masselli information on January 12, 1981. I will cite to you, and put in the record at this point, a January 14, 1981, letter from William H. Webster by you, which gives us the information, basically, that led us into the Picardo allegations.

[The following was received for the record:]

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

January 14, 1981

Honorable Orrin G. Hatch
Chairman
Committee on Labor and Human Resources
United States Senate
Washington, D. C.

Dear Mr. Chairman:

Reference is made to my letter dated January 7, 1981, which furnished you information concerning Raymond J. Donovan. Additional information has been developed concerning Mr. Donovan and in view of your prior request, a letterhead memorandum concerning this information is enclosed.

If additional information is developed, you will be advised.

Sincerely yours,

Francis M. Mullen, Jr.

William H. Webster
Director
by Francis M. Mullen, Jr.

Enclosure

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

January 14, 1980

RAYMOND J. DONOVAN

A protected Government witness, who has provided reliable information in the past and has furnished valuable testimony in three successful prosecutions, advised on January 13, 1981, that he became involved with the Schiavone Construction Company (SCC), Secaucus, New Jersey, in late 1967 or early 1968. This witness stated he visited SCC on fifteen to twenty different occasions to pick up payments for "labor peace" in the guise of billings for truck rental which never took place. This witness stated he delivered the bills and received payment from an individual whom he identified as Raymond Donovan.

Senator HATCH. You see, the problem was, January 12, you received this Masselli information. On the 12th, the Labor Committee had the Donovan hearing. On the 15th, we were going to mark up on Mr. Donovan's nomination. Had Picardo not surfaced, we would have marked him up, voted on the nomination, and never known anything about these various allegations, that have since, at least, been proved untrue, but nevertheless, important to us at that particular time. Part of the reason was you decided not to tell us about the New York wiretap. That was the problem.

Mr. MULLEN. Just the one reference, and that was the only decision. With regard to Big J, I understand the agent who had that information believed he had furnished in a summary.

The CHAIRMAN. Senator, did you want something placed in the record.

Senator HATCH. Yes, with your permission, I will put that in the record?

The CHAIRMAN. Without objection.

Senator HATCH. Well, as of January 12, you not only knew of the Masselli wiretap, but really, everything about the Masselli situation, didn't you? You had the information at that time. I will cite to you, and we will put this in the record, too—this is the January 12, 1981, memorandum to Mr. Mullen from C. P. Monroe, which included this information.

[The following memo was received for the record:]

Memorandum

To : Mr. Mullen

Date 1-12-81

From : C.P. Monroe CM

Subject : RAYMOND J. DONOVAN
SPECIAL INQUIRY

3

PURPOSE: To advise of allegations of possible LCN affiliations of Mr. Donovan, who is being considered as Secretary of Labor in the Reagan Administration.

RECOMMENDATION: None. For information.

CM

DETAILS: The New York Division advised by teletype dated 1-10-81 (attached) that information has been developed as of 1-8-81 indicating Raymond J. Donovan, who is being considered for the position of Secretary of Labor in the Reagan Administration, and who is currently involved in Senate Confirmation Hearings, may possibly have LCN affiliations.

Two independent sources of the New York Division have advised that the Schiavone Construction Company, in which Mr. Donovan is an Executive Vice President, is "mobbed up." One source indicates the upper management of the Schiavone Construction Company is closely aligned with the Vito Genovese Family of the LCN through Schiavone Vice President Albert Magrini and its contacts with Jopel Construction headed by William Masselli, who is an alleged self-admitted "solider" in the Genovese family. This New York source alleges Mr. Donovan is acquainted with LCN members through Magrini and Masselli on a business and social basis and has in fact travelled from New York to Miami for the 1979 Super Bowl with Masselli and other LCN figures in the construction business.

ENCLOSURE

1 - Mr. Colwell
1 - Mr. Mullen
1 - Mr. Monroe
1 - Mr. Schulte
1 - Mr. Adamski

:rap (VI)
(6)

7 JAN 26 1981

Memorandum from C.P. Monroe to Mr. Mullen
RE: RAYMOND J. DONOVAN

Another New York source who is a former employee of the Schiavone Construction Company indicates that Mr. Donovan is an alcoholic and a heavy gambler making bets in the $5,000 to $6,000 a bet range.

None of the New York sources was able to provide any information that shows any specific criminal misconduct on the part of Mr. Donovan.

A search of the central files of the FBI, the indices of the New York Office, and the Organized Crime Information System disclosed one pertinent reference to Mr. Donovan which is a Title III overhear between William Masselli and his son Nat Masselli, which makes reference to the fact that Mr. Masselli was going to pick up Ronnie Schiavone and Raymond J. Donovan and take them to a social function.

The above information was furnished to Fred F. Fielding, Conflict of Interest Counsel, Office of the President-elect, at approximately 2:45 p.m., 1-11-81, by Anthony Adamski, Jr., Special Inquriy Unit, in general terms to protect the identity of the New York sources. Mr. Fielding was asked if he wished Mr. Donovan interviewed concerning these allegations and Mr. Fielding stated he did not wish Mr. Donovan interviewed by Bureau Agents at this time because it would serve no purpose since there were no specific allegations of criminal misconduct.

Investigation at New York, Newark, and Miami continuing to resolve the allegations of Mr. Donovan's possible LCN affiliations.

Mr. MULLEN. I am sorry, Senator. Which information was that?

Senator HATCH. I might just mention for the record that we did not get this memo until June of 1982, long after we marked Mr. Donovan's nomination up and got it to the floor of the U.S. Senate. In this memorandum given to you on the 12th of January, there were a lot of allegations. I do not mean to go completely through these allegations again, unless you want me to. Basically, they were very, very important allegations that we did not hear about until almost 17 months later. Actually, the memo says basically that Donovan was mobbed-up, that he had gone to the Super Bowl, et cetera.

Mr. MULLEN. That information was furnished to the committee about being mobbed-up.

Senator HATCH. Not until January 27, long after we would have marked Mr. Donovan up, you see. In other words, you had this on the 12th. We set up a mark up for the 15th. Picardo surfaced between the 12th and the 15th. I cancelled the mark up. Then we scheduled another mark up for the 29th, as I recall, and we were given some information on the 23d, but we were not given this information until—as I recall, it was in June of 1982, months later, more than a year later.

Mr. MULLEN. Senator, you keep personalizing this as though I had all of this information and was dealing with the transition team and the committee. There was an established practice, and other individuals, subordinates, were tasked with exchanging information and keeping the committee advised.

Senator HATCH. I have no problem with that. But you see, you did have this information, and you were the one who testified, and that is the problem that we have. And this is some of the information you did not give us, even on the 23d, before the 29th markup. I might add, when you corresponded directly to the committee on January 14, you did not give us this Masselli information at that time. We did get some of the Masselli information on the 23d, but not all this information, which was extremely critical to the committee.

Mr. MULLEN. Well, there was some information, and I know your committee has indicated they did not receive the January 12 memorandum, as I recall it, but that was furnished to the transition team, and the practice at the time was that that was then furnished to the Senate. I was not personally responsible for conveying all of the information. I do accept responsibility for any mistakes that I may have made, but as far as the day-to-day dealing with the committee and the transition team, that was the responsibility of others.

Senator HATCH. Well, isn't it a fact that you mentioned the New Jersey overhears at the outset of your testimony in order to avoid the Masselli tape problem, because you mentioned New Jersey, but you did not mention New York, although you knew about New York.

Mr. MULLEN. No, Senator Hatch. I believe I have indicated this to you previously and in other testimony. The primary purpose was that the Schiavone Co. was located in New Jersey, and it just seemed to us at the time that if there had been any illicit activity that it would have come up on a wiretap in that area.

Senator **Hatch**. Well, *this is what was said at the time, last* summer. I asked this question:

> Isn't it a fact that you mentioned the New Jersey overhears at the outset of your testimony in order to avoid discussing the Masselli tapes themselves?

Your answer was:

> No, that was not my primary purpose, Senator Hatch. With regard to the New Jersey wiretaps, this was not a question really put to me by any Senator or staff member. This was information volunteered by the FBI. Our intention in providing that information was to further assist the committee. This is something else to help them make up their minds.

As I recall, that was your testimony.

Mr. **Mullen**. That is correct.

Senator **Hatch**. OK. Do you wish to change that in any regard?

Mr. **Mullen**. No. It was an effort to help the committee. There were no untoward or ulterior motives at all in that connection.

Senator **Hatch**. You did not really believe that "volunteering," as you used the term, the New Jersey wiretaps, showing nothing, was really going to assist the committee, did you?

The **Chairman**. Senator Hatch, excuse me just a minute. There is a vote on. I will go and vote and try to get back as soon as I can.

Senator **Hatch**. All right, and then, as soon as the five bells ring, I will come over, and I will try and get back.

[Whereupon, Senator Hatch assumed the chair].

Mr. **Mullen**. Yes, I did, Senator Hatch.

Senator **Hatch**. You thought that it was significant.

Mr. **Mullen**. I did, being that there were all of the allegations being made about organized crime connections, and it was just the thought that there had been so many wiretaps, perhaps something would have been overheard. And the fact that there was not, I thought was significant.

Senator **Hatch**. Well, fine, and I think it is significant that nothing happened on the New Jersey wiretap, but by gosh, you then neglect to tell us about the New York wiretap, where significant overhears were had.

Mr. **Mullen**. Yes, and I think that is where we have our difficulty; it was we did not focus on that Masselli overhear as we should have.

Senator **Hatch**. You are saying that because I did not specifically ask you about New York, because I did not know anything about it, that you did not feel it was essential to mention that at that time.

Mr. **Mullen**. I do not know if I would go to that point, saying because you did not specifically ask, it was not volunteered. I try to be responsive when questions are asked.

Senator **Hatch**. Well, let me direct your attention to this Washington Post story of May 17, 1983—and for members of the committee, if you do not have a copy, we will be happy to give you a copy of this. This story reports that, in June 1982, before the Labor Committee investigation began last summer, you admitted in a taped interview with reporters that you "artfully and consciously" mentioned New Jersey to avoid mentioning New York.

[The following Washington Post story was received for the record:]

A4 Tuesday, May 17, 1983 THE WASHINGTON POST

Acting DEA Head Faces Query on Donovan

By George Lardner Jr.
Washington Post Staff Writer

The Senate Judiciary Committee expects to question Francis L. (Bud) Mullen Jr., acting head of the Drug Enforcement Administration, within the next month about allegations that he gave misleading testimony at 1981 confirmation hearings for Secretary of Labor Raymond J. Donovan.

A spokesman for the Judiciary Committee said it also is studying a legal memorandum asserting that Mullen has been acting without proper authority at the DEA for almost two years because of an old and rarely cited federal law governing temporary appointments.

Mullen's nomination as DEA adminstrator has been bottled up since last June while the Senate Labor Committee has investigated what it called "remaining, unanswered questions" about his role in the FBI's pre-confirmation investigation of alleged ties between Donovan and organized crime.

The Labor Committee yesterday formally issued a special staff report accusing Mullen, who is still an FBI executive assistant director and who was in overall charge of the Donovan inquiry, of misleading the senators and deliberately holding back pertinent information about the case.

A special prosecutor later concluded there was "insufficient credible evidence" to warrant Donovan's prosecution on any charge, but the special Senate report said the committee should have been told much more about the allegations so it could have weighed them properly.

The study charged that the FBI failed to follow its own investigative guidelines for the Donovan inquiry, and recommended that Congress enact legislation to make sure it gets all the information the FBI develops in such cases.

Mullen came under fire for what he described in a Washington Post interview last June as a conscious decision not to tell the Labor Committee that Donovan's name had been mentioned on an organized crime wiretap in New York City.

The committee report noted that the FBI official in immediate charge of the Donovan inquiry, Anthony Adamski, had characterized the taped reference as "pertinent," but Mullen disputed that and defended his actions on the grounds that the conversation in question "didn't indicate any criminality on the part of Ray Donovan."

Mullen told the Labor Committee on Jan. 27, 1981, in his prepared testimony, that a check of "electronic surveillances" by "the FBI in New Jersey" revealed no mention of either Donovan or the Schiavone Construction Co. of Secaucus, where Donovan was executive vice president.

In short, yesterday's report charged, Mullen "decided to mention the wiretap search in New Jersey that disclosed nothing and to withhold the earlier search in New York that uncovered Masselli's tape reference to Mr. Donovan." The reference was to alleged Mafia figure William Masselli.

Questioned about the sequence in an executive session last August by Senate Labor Committee Chairman Orrin G. Hatch (R-Utah), Mullen took exception to the suggestion that he mentioned the New Jersey "overhears" at the outset of his 1981 testimony in order to avoid discussing the Masselli tapes themselves.

He said, "That was not my primary purpose . . . . That information [about the New Jersey wiretaps] was to further assist the committee . . . something else to help them make up their minds."

By contrast, in his tape-recorded interview with several reporters last June, Mullen was asked this question and gave this answer:

Q.: " . . . I know you testified in your prepared statement about New Jersey, and you did that very artfully and consciously because you didn't want to spill the Masselli beans, right?"

Mullen: "Yep."

A spokesman at the DEA said yesterday that Mullen had no immediate comment.

Senator HATCH. According to this report, you were asked the following question and responded, as follows:

> *Question.* I know you testified in your prepared statement about New Jersey, and you did that very artfully and consciously, because you did not want to spill the Masselli beans, right?

Your answer was: "Yep."

Did you say that to the reporters at that time?

Mr. MULLEN. No. I think we have to acknowledge that those are the reporter's words and not mine.

Senator HATCH. The "artfully and consciously" were the reporter's words.

Mr. MULLEN. Yes, and if I had testified, Senator Hatch, artfully and skillfully, I would not be answering these questions today.

Senator HATCH. I think there is some truth to that.

Mr. MULLEN. If anybody was artful and skillful in that interview, it was not Bud Mullen.

Senator HATCH. But the important part of this, Bud, really is that you did not want to spill the Masselli beans, right, and your answer was "Yep." Did you give that answer in response to that particular phrase of that question?

Mr. MULLEN. If he says that is on tape, then it must have happened, but that article does not accurately convey my thoughts at that time, nor does it convey my thoughts accurately at this time, Senator.

Senator HATCH. Why don't I turn to Senator Metzenbaum, and ask that your questions not interrupt the line of questioning that I am making.

I will go over and vote and then I will come back, and hopefully, we can resolve this in a few more minutes, OK?

Mr. MULLEN. I hope so.

Senator HATCH. Go ahead. I will do that.

Senator METZENBAUM. I thank you.

Mr. Mullen, I know very little about this subject. Senator Hatch has been very thorough and painstaking in the entire investigation, and I am not even sure I was here when he inquired of you in the past. But I must tell you that I am just astounded. I do not know when I have sat in a courtroom or in the Senate hearing where I am more flabbergasted by the responses, that you get a question about wiretapping in New Jersey and you do not think it is relevant to respond about wiretapping about which you knew something in New York and it was relevant. You know of the Schiavone Co.'s name appearing in the file in the Hoffa case, and you do not disclose that information to the committee.

There is another telegram here, a telex—I think it has your—it says, "allegation that Donovan had definite ties to the LCN in his capacity as a labor negotiator." Are you familiar with that telex? I will have somebody bring it to you to show it to you and ask whether or not you are familiar with it and also whether that is your signature in the lower right-hand corner.

[The following telex was received for the record:]

REDACTED

RECEIVED
TELETYPE UNIT
11 JAN 81 22 44Z

RECEIVED
FEDERAL BUREAU
OF INVESTIGATION
COMMUNICATIONS SECTION

NY0008 011 2235
OO HQ NK MM
DE NY 001
O 112235Z JAN 81
FM: NEW YORK (161B-7853) (P) (M-13)
TO: DIRECTOR IMMEDIATE
NEWARK IMMEDIATE ~~///ALL OFFICES VIA FBIHQ///~~
MIAMI IMMEDIATE
BT
UNCLAS

RAYMOND J. DONOVAN, SPIN, BUDED: PAST

ALL PERSONS INTERVIEWED WERE ADVISED OF THE PROVISIONS OF THE PRIVACY ACT OF 1978, AND THOSE REQUESTING CONFIDENTIALITY HAVE BEEN SO NOTED.

ON JANUARY 11, 1981, T-8, WHO HAS PROVIDED RELIABLE INFORMATION IN THE PAST, ADVISED THAT APPOINTEE IS RUMORED TO HAVE ESTABLISHED "DUMMY CORPORATION" DEALING WITH HOME IMPROVEMENTS FOR PURPOSE OF LAUNDERING MONEY. T-8 STATED THAT HE HAS NO DIRECT PERSONAL KNOWLEDGE OF THIS ALLEGED DUMMY CORPORATION NOR DOES T-8 KNOW SOURCE OF OR FOR WHOM MONEY BEING LAUNDERED.

161-15093-36

NOT RECORDED
FEB 10 1981

T-8 FURTHER STATED APPOINTEE HAS DEFINITE TIES TO LCN FIGURES IN A LIAISON CAPACITY. T-8 STATED THAT IN SITUATIONS IN WHICH BIDS ARE BEING SUBMITTED AND CONTRACTS AWARDED TO SCHIAVONE, APPOINTEE

NY 161B-7053 REDACTED

REPRESENTS SCHIAVONE IN NEGOTIATIONS WITH REPRESENTATIVES OF VARIOUS TRADE UNIONS. AS AN EXAMPLE, T-8 STATED APPOINTEE WOULD MEET WITH THE VARIOUS UNION REPRESENTATIVES AND DISCUSS SUCH MATTERS AS COST FACTORS, EXPENSES AND MANPOWER REQUIREMENTS OF A PARTICULAR JOB. T-8 STATED THAT IN THESE DEALINGS APPOINTEE HAS MADE HIS CONNECTIONS.

T-8 ALSO STATED THAT SCHIAVONE CONSTRUCTION HAD SERIOUS FINANCIAL PROBLEMS RECENTLY. T-8 HAS NO PERSONAL KNOWLEDGE OF THIS FINANCIAL DIFFICULTY BUT STATED THAT SCHIAVONE HAD OVEREXTENDED ITSELF BY APPROXIMATELY $23 MILLION DOLLARS AND WAS FORCED TO TAKE A LOAN FROM FIAT MOTORS IN ITALY.

T-8 SUGGESTED THAT THE RELATIONSHIP BETWEEN SCHIAVONE CONSTRUCTION AND BIG J DEMOLITION BE EXPLORED IN THAT IN ORDER TO DO BUSINESS WITH BIG J DEMOLITION, ACCORDING TO T-8, ONE HAD TO HAVE LCN CONNECTIONS.

T-8 REQUESTED CONFIDENTIALITY AND AN EXPRESS PROMISE OF COMPLETE CONFIDENTIALITY WAS GRANTED.

ADMINISTRATIVE

[redacted]

RENYTEL, JANUARY 10, 1981.

BIG J DEMOLITION DESCRIBED IN RENYTEL.

PAGE THREE NY 161B-7053

NEW YORK CONTINUING TO CONTACT ALL SOURCES WHO ARE FAMILIAR WITH ORGANIZED CRIME, LABOR RACKETEERING, POLITICAL CORRUPTIONS AND RELATED AREAS.

BT

Senator **Metzenbaum**. Is that your signature in the lower righthand corner? There is part of a signature there, it looks like.

Mr. **Mullen** [perusing document]. I do not see my signature on here, Senator. I believe I have seen this teletype.

Senator **Metzenbaum**. It says "six"—pardon?

Mr. **Mullen**. I have seen this teletype in the past, though, but I do not believe that is my signature.

Senator **Metzenbaum**. That is fine.

Did you disclose the information contained in that teletype to the committee?

Mr. **Mullen**. As I indicated earlier—I do not know if you were here, Senator Metzenbaum—the FBI used the established practice then of summarizing information that we received in teletypes. In fact, I have been advised that as many as 30-plus teletypes may be summarized into two or three lines, and that was the practice utilized at that time.

Senator **Metzenbaum**. Summarized for whom? You are asked questions at a committee hearing. This matter has tremendous relevance. What difference does it make about the FBI's practice about summarizing? Why don't you answer the question, and why don't you tell the committee about what is in this teletype? It is relevant. You decide on your own not to answer the question, or to give only part of the information? You say that you have 86,000 investigations. This is the one that was relevant, and you were the main witness. Why didn't you tell us?

Mr. **Mullen**. Well, I answered the questions as fully and as frankly as I could. I would not have recalled this specific teletype while testifying. There were many, many documents that were summarized and furnished to the committee. I would have been working off of a prepared statement that was used in my testimony.

Senator **Metzenbaum**. You had a prepared statement. You had the knowledge in your head, didn't you, of this teletype?

Mr. **Mullen**. I had some knowledge, but you know, you do not recall all——

Senator **Metzenbaum**. But you did not tell the committee about it, did you?

Mr. **Mullen**. Oh, I told the committee about extensive material.

Senator **Metzenbaum**. About what?

Mr. **Mullen**. Extensive material that we had. We had a very long hearing, and I furnished substantial information to the committee.

Senator **Metzenbaum**. Did you tell the committee that [reading] "T. 8 further stated that appointee has definite ties to LCN"—La Cosa Nostra, I gather that stands for—"figures in a liaison capacity"? Did you tell them that that was in the teletype, that you had such information?

Mr. **Mullen**. I would not have stated that "that is in a teletype," but in substance, that information was transmitted, I believe, to the committee, yes.

Senator **Metzenbaum**. By whom?

Mr. **Mullen**. Not by me, but by subordinates.

Senator **Metzenbaum**. Well, why didn't you tell them? Why didn't you tell the committee?

Mr. **Mullen**. Well, if that was discussed, I certainly would. I believe my prepared statement did say that. I believe it did.

Senator **Metzenbaum**. Your prepared statement stated that the committee has information that the appointee has definite ties to LCN figures?

Mr. **Mullen**. Well, this is an internal document, and we never were able to verify "definite ties", so the statement would have probably said "alleged ties."

Senator **Metzenbaum**. Said what?

Mr. **Mullen**. Alleged ties.

Senator **Metzenbaum**. Mr. Mullen, I have to go to a hearing, but I must tell you that I am not amazed that you are testifying, or even at your testimony. I am just shocked beyond comprehension that you are here as an appointee to head up the DEA. And why the White House would do that is beyond my comprehension, in view of the record of your past testimony.

I do not know how you will ever again be able to come before a committee and we are going to be able to believe we are getting all of the information that you know, or whether you are going to give us that which I consider to be gobbledegook. And I say to you, sir, that I am not sure it is your fault; I think it is the White House's fault, for naming you as their appointee to head up this very, very important function, and it looks to me as if the President and the administration lose credibility, because certainly, Senator Hatch's inquiry of you causes me not to have much confidence in your credibility.

Mr. **Mullen**. Well, I am sorry you feel that way, Senator.

Mr. **Short**. The committee will stand in recess until the return of the Chair.

[Short recess.]

[Whereupon, Senator Hatch assumed the chair.]

Senator **Hatch**. In order to save time, I will just continue on with my questions until Senator Denton gets here, because my first round is over, and I will try and finish up in the second round.

Mr. **Mullen**. OK.

Senator **Hatch**. In the eyes of some of the members of our committee, and I have to admit in my own eyes, following the testimony and then finding out this information later, some of it almost 1½ years later, when we look at that newspaper account of your conversations with these various journalists, in particular the one who wrote the article, it does look like you willfully withheld that information because you did not want to bring out the Masselli wiretap or the New York wiretap. And it also looked to us like you were trying to lead us away from any discussion concerning wiretaps by giving us what we considered to be absolutely irrelevant information about the New Jersey wiretap, because there was nothing found there in your investigation of that.

Now, giving you the benefit of the doubt, is it your testimony that you can give misleading answers if, in your opinion, the information you are withholding is not helpful?

Mr. **Mullen**. No; I do not think I can give misleading answers under any conditions, Senator. And when you refer to information that you learned over 1½ years later, there was some information that did turn up later in FBI records that I was not aware of at the time I testified, so if you are referring specifically to the Masselli overhear, that, I had learned of before the testimony, but there was other material that came up later that I was not aware of.

Senator HATCH. You see, that is what I am talking about, this material you did know about before our hearing on Donovan and before our markup, and yet, we still did not receive this material until really quite a period of time later.

Mr. MULLEN. Are we talking about the one item?

Senator HATCH. We are talking about the Masselli tapes and all of the information that is contained in those memorandums from the FBI that contain all of the references to Masselli.

Mr. MULLEN. I think we are getting back again to the practice of summarizing material. In other words, when it bears upon the same or similar situations, you get a number of allegations, a lot of information, in the summary process. And you may lose some in the translation, but as far as intentionally withholding or intentionally misleading, we just did not do that, Senator Hatch.

Senator HATCH. Well, I am also referring to Hofex, that was not mentioned before the confirmation of Mr. Donovan.

Mr. MULLEN. May I explain the Hofex?

Senator HATCH. Sure. That is what I am here for.

Mr. MULLEN. The Hofex reference was contained in a note that Judge Webster prepared and sent to myself and Mr. Revell. I think each of us wrote other names on that for review. And in that note, it referred, I believe, to a conversation that the Director had had with Ed Meese. He also based the note on a conversation with Mr. Revell and a recollection of a conversation he had had with me. And he indicated in there that no information had turned up on the nominee; however, there were references to Schiavone Construction in the Hofex investigation.

Now, Judge Webster believes that somebody told him that. And, based on my five years of experience of working for him, I have a tremendous respect for his intellect, his mind, and his memory, and it is my opinion that somebody must have told him that if he had it in a note.

The fact remains that it was not accurate; it was a mistake, and there were no references to Schiavone Construction in the Hoffa investigation. That was an error.

Now, it was not furnished to the committee because it just was not accurate; there was no such information. And I understand the note itself did not turn up until sometime after I had testified.

Senator HATCH. But at the time, in January 1981, you did not know it was inaccurate. For instance, this December 15, 1980, memorandum to Mr. Mullen, re transition, it says this: "Mr. Edwin Meese called during my absence at 10:15 a.m., December 12, 1980, and said he would return the call upon my return. He was tied up with President-elect Reagan and asked Mr. Penn James to return the call. Mr. James asked whether we had reached any conclusion as a result of our inquiry into Pat Donovan"—clearly, an error there—"I checked with Mr. Revell, and based on information which he supplied, as well as my recollection of conversation with Mr. Mullen while I was in New York on December 10, that we had reviewed all our indices and had checked with all field officers, and nothing negative had been disclosed. I advised that a company, Schiavone"—but misspelled "C-h-i-v-o-n-e" and in parens afterward, "(PH)" meaning phonetic, but I think clearly, Mr. Donovan's company—"in which he apparently had a very substantial interest, had appeared a number of times in reports in our Hofex case, but that none of these suggested any criminality or organized crime associations."

[The following memorandum was received for the record:]

December 15, 1980

FEDERAL GOVERNMENT

MEMORANDUM TO MR. MULLEN

RE: TRANSITION

Mr. Edwin Meese called during my absence at 10:15 a.m. 12/12/80, and said he would return the call upon my return. He was tied up with President-elect Reagan and asked Mr. Pen James to return the call. Mr. James asked whether we had reached any conclusion as a result of our inquiry into Pat Donovan. I checked with Mr. Revell and based on information which he supplied, as well as my recollection of conversation with Mr. Mullen while I was in New York on December 10th, that we had reviewed all our indices and had checked with all field offices and nothing negative had been disclosed. I advised that a company, Chivone(PH), in which he apparently had a very substantial interest, had appeared a number of times in reports in our HOPEX case, but that none of these suggested any criminality or organized crime associations.

I further advised that it did not appear necessary, in our view, to conduct a full field investigation based on the results of the name check. Mr. James said that he might need our assistance in the course of the confirmation proceedings and I, of course, stated that we would do whatever we could to help.

I advised that the report had been sent to Miss Jane Danower (PH), Mr. Fielding's secretary. Mr. Fielding was present with Mr. James at the time of our conversation, and was not aware that the report had been delivered.

William H. Webster
Director

1 - Mr. Colwell
1 - Mr. Revell
1 - Mr. Monroe

WHW:mfd

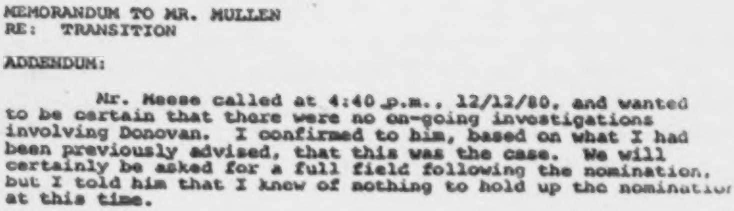
Exec AD Inv. ___
Exec AD Adm. ___
Exec AD LES ___
Asst. Dir.:
Adm. Servs. ___
Crim. Inv. ___
Ident. ___
Intell. ___
Laboratory ___
Legal Coun. ___
Plan. & Insp. ___
Rec. Mgnt. ___
Tech. Servs. ___
Training ___
Public Affs. Off. ___
Telephone Rm. ___
Director's Sec'y ___

MAIL ROOM ☐

B-11

monroe
Schulte

17 DEC 30 1980



MEMORANDUM TO MR. MULLEN
RE: TRANSITION

ADDENDUM:

Mr. Meese called at 4:40 p.m., 12/12/80, and wanted to be certain that there were no on-going investigations involving Donovan. I confirmed to him, based on what I had been previously advised, that this was the case. We will certainly be asked for a full field following the nomination, but I told him that I knew of nothing to hold up the nomination at this time.

Senator Hatch. So at the time, you did not know one way or the other.

Mr. Mullen. Well, now, at the time of my testimony, I did not recall this particular note. There were many, many notes, and I have indicated in prior testimony before you, on some days, I would see hundreds of documents. But the information itself relating to Schiavone mentions and Hofex—which is the Hoffa execution case; that is our code name for that investigation—was inaccurate. Now, had those names actually turned up, I am sure that information would have been furnished to the committee, had there been such information.

Senator Hatch. But the point I am making is that you did not know the memo was inaccurate as of January 27, 1981.

Mr. Mullen. At the time—we are talking about the time of my testimony?

Senator Hatch. Right.

Mr. Mullen. At this time, and at that time, I did not even recall that reference or that particular note. If I had known about that note, it would have turned up a lot sooner than it did.

Senator Hatch. Well, you knew about this transition note, because that had gone to you. But I have to admit, you were handling how many cases at the time? You did mention that to me during——

Mr. Mullen. Well, I did not handle each one personally——

Senator Hatch. No; but in your jurisdiction.

Mr. Mullen [continuing]. But overall, the FBI had a total of 86,000 investigations under way.

Senator Hatch. My time is really up for right now. I would like to come back, Mr. Chairman, as soon as I can, but I understand my 15 minutes is up, and I do not want to infringe upon Senator Denton's time.

The Chairman. The distinguished Senator from Alabama.

STATEMENT OF HON. JEREMIAH DENTON, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator Denton. Thank you, Mr. Chairman.

I am going to reserve any comments on the genre of questioning because I am not expert on that. I will make some references to it. But I think that it should be viewed as a separate issue which, in the future, may be conclusive or inconclusive. I do not find anything conclusively wrong with Mr. Mullen's testimony.

I am going to testify as to what I do know about the man. I am chairman of the Subcommittee on Security and Terrorism, and I have exercised oversight over the Drug Enforcement Administration for the last 2½ years. As a result of my association with the acting head of that organization, Bud Mullen, and as a result of personal association with him, I have the highest opinion of him. I unequivocally endorse and support his nomination to be Administrator of the Drug Enforcement Administration.

I have traveled with him on two occasions, once to a drug enforcement hearing in which he played a very leading role—I think a very courageous role—another time, to an important speech to the Palm Beach Institute of which he was half the act, and a very fine half, indeed. I have had him in my home. I have the deepest respect for the man.

When judged from the standpoint of his background, training, determination, integrity, demonstrated ability and competence, Bud Mullen is eminently qualified for this important post. He is a family man, an Air Force veteran with honorable military service, and above all, a dedicated career law enforcement official.

I have reviewed his background and qualifications. I was struck by many significant accomplishments in his career. I will not take up the time in this oral statement, but will ask that my entire prepared statement, highlighting some of these significant accomplishments be included in the record.

The **Chairman**. Without objection, so ordered.

[The prepared statement of Senator Denton follows:]

PREPARED STATEMENT OF SENATOR DENTON

As Chairman of the Subcommittee on Security and Terrorism which has exercised oversight of the Drug Enforcement Administration for the last two and one-half years, it is a distinct pleasure for me to welcome Francis M. "Bud" Mullen, Jr. to this, his nomination hearing, and to unequivocally endorse and support his nomination to be Administrator of the DEA. I have come to know and greatly admire Bud Mullen since he assumed the position of Acting Administrator on June 19, 1981.

When judged from the standpoint of his background, training, determination, integrity, demonstrated ability and competence, Bud Mullen is eminently qualified for this important post. He is a family man, an Air Force veteran with honorable military service, and, above all, a dedicated career law enforcement official.

As I reviewed his background and qualifications, I was struck by many significant accomplishments in his career, some of which I believe it would be appropriate to mention at this time. After completing a four year tour of duty in the Air Force as an enlisted radar operator, Mr. Mullen worked his way through college, holding down a full-time job as patrolman on the 12:00 midnight to 8:00 a.m., shift with the New London, Connecticut Police Department, and attending college full-time during the day. At this time, he also had a wife and small children.

Upon graduation from college with a degree in history and education, he began his career as an FBI special agent in the Los Angeles field office, eventually attaining the position of Executive assistant Director, one of the top three management positions in the FBI. He has had field and headquarters experience, in the streets and in the office, and has served as Assistant Special agent in charge of the Denver field office and as Special Agent in charge of the Tampa and New Orleans offices. In 1978, he was brought back to FBI headquarters by Director Webster to serve as Deputy Assistant Director of a new priority program, dealing with Organized Crime and White Collar Crime. This position he held until 1979, at which time Judge Webster appointed him Assistant Director of the Criminal Investigative Division, the primary investigative division in the Bureau. In 1980, he was elevated to one of the three newly created positions of Executive Assistant Director, answering directly to Director Webster on matters pertaining to criminal investigations and foreign counter-intelligence.

During his long and distinguished FBI career, Mr. Mullen has been commended many times for outstanding performance. In 1967, he was commended for bravery for single-handedly disarming a man who had gone beserk in the Republican Party

Headquarters in Los Angeles. Knowing Mr. Mullen's integrity and impartiality, I have no doubt he would have performed in the same courageous manner if it had occurred in the Democratic Headquarters. He has also received the Attorney General's Equal Employment Opportunity Award for his work in advancing minority opportunities within the Agency.

As National Chairman of the Boy Scouts Law Enforcement Explorer Program, Mr. Mullen generously contributes both his experience and time in encouraging the 35,000 members, young men and women ages 14-20, to seriously consider law enforcement as a profession. He is also Chairman of the International Association of Chiefs of Police Narcotics Committee where he serves as a vital link between federal, state and local law enforcement.

In considering and weighing the merits of this nomination, the members of this Committee and of the Senate are in the unique position of being able to not only assess Mr. Mullen's past accomplishments in other positions but also to evaluate his present demonstrated performance in the position for which he has been nominated. Bud Mullen has fulfilled the duties and responsibilities of acting Administrator of the DEA since June 19, 1981, a period of great transition and, at the same time, significant accomplishment for this, our primary federal drug enforcement agency.

Under his able leadership, the DEA has undergone a major reorganization which has resulted in the more efficient and effective use of the DEA's resources in carrying out its responsibilities. The DEA and the FBI have combined resources and efforts since January 1982 and this has resulted in a dramatic increase in the number of cooperative drug investigations. I would also note that there has been a dramatic increase in the use of wiretaps, an important investigative tool in major drug cases. During his tenure, the DEA has played an important major role in the highly successful South Florida Task Force and DEA will be a prominent participant in the twelve new regional drug task forces which should be fully operational by August of this year. Many major cases have been made, including the very significant indictment of four high ranking officials of the Cuban government who were charged with facilitating the importation of drugs into the United States. He has also overseen the successful integration of military resources into our drug interdiction efforts since the recent amendment to the Posse Commitatus Act.

In other areas, the FOIA backlog at the DEA has been reduced 73 percent, from a 2-year response delay in answering requests to the present 90 day average time and it is expected that, by October, all requests will take no more than two weeks to process. He has instituted a career development program for DEA agents. These are but a few of the many significant accomplishments which have occurred under Bud Mullen's leadership of the DEA. Rather than delineate them all, I request that his opening statements at the last two DEA oversight hearings before the Subcommittee on Security and Terrorism and a list of accomplishments of DEA for the period January 1981-May 1983 be made a part of this record.

Mr. Chairman, this country is fortunate indeed, to have a man of Bud Mullen's caliber in a position of leadership, a man whose career reminds me of the promise of America that through hard work and determination one has the opportunity to attain the highest pinnacle in any field. Bud Mullen has accomplished this feat in the law enforcement profession by working his way through college, beginning as a patrolmen in local enforcement and rising through federal law enforcement ranks to the top position in the Drug Enforcement Administration.

I have come to know him to be a man of character, leadership, integrity, and natural ability, who has demonstrated his competence in leading the DEA for two years during a critical period of transition. In his dealings with the Subcommittee on Security and Terrorism, he has been most cooperative, forthright, and candid as together we have assessed and discussed both the strengths and weakness of the Agency. He has done the job and done it well. He understands the problems of the agent on the street as well as the intricacies of the governmental bureaucracy at the highest levels. Testimony from various agencies involved in drug law enforcement indicates that cooperation and coordination between the DEA and these other agencies has never been better.

I heartily endorse, without reservation, Bud Mullen's nomination to continue to lead the DEA in the crucial years ahead.

Senator DENTON. I must say during this hearing that, in his long and distinguished FBI career, Mr. Mullen has been commended many times for outstanding performance. In 1967, he was commended for bravery, for singlehandedly disarming a man who had gone berserk in the Republican Party Headquarters in Los Angeles. Knowing Mr. Mullen's integrity and impartiality, and the Democrats' propensity for going berserk even more frequently than Republicans, I have no doubt that he would have performed in the same courageous manner if that man had gone berserk in a Democratic Party Headquarters.

As national chairman of the Boy Scouts law enforcement explorer program, Mr. Mullen generously contributes both his experience and time in encouraging 35,000 members, young men and women ages 14 to 20, to seriously consider law enforcement as a profession.

He is also chairman of the International Association of Chiefs of Police Narcotics Committee, where he serves as a vital link between Federal, State, and local law enforcement.

When considering and weighing the merits of this nomination, the members of this committee and of the Senate are in the unique position of being able to assess not only his vast accomplishments in other positions, but also to evaluate his present, demonstrated performance in the position for which he has been nominated.

I am not uncritical of performance of duty. It has been my life to evaluate performances of duty, and I am not unfamiliar with his. He has certainly fulfilled his duties and responsibilities as Acting Administrator of the DEA since July 13, 1981, in an outstanding manner. It was a period of great transition and at the same time, significant improvement in the accomplishments of the Drug Enforcement Administration. Under his able leadership, the DEA has undergone a major reorganization, which has resulted in a more efficient and effective use of the DEA's resources in carrying out its responsibilities. The DEA and the FBI have combined resources and efforts since January 1982, and this has resulted in dramatic increase in the number of cooperative drug investigations. I will also note that there has been a dramatic increase in the use of wiretaps, an important investigative tool in major drug cases, and they have been productive uses.

During his tenure, the DEA has played an important major role in the highly successful south Florida task force, and DEA will be a prominent participant in the 12 new regional drug task forces which should be fully operational by August of this year.

Many major cases have been pursued, including the very significant indictment of four high-ranking officials of the Cuban Government who were charged with facilitating the importation of drugs into the United States. I would say, parenthetically, that without wanting to get into personalities or sensitive events, that he showed personal courage as well as great care and discrimination in reaching the opinion, and expressing it rather early on, that the Cuban Government was officially involved, deliberately and consciously involved, in facilitating the importation of drugs into the United States, which matter or which conclusion was being reached very slowly and reluctantly by others—overreluctantly, in my view, in light of the evidence. Subsequently, they all joined him in that view.

He has also overseen the successful integration of military resources into our drug interdiction efforts since the recent amendment to the Posse Comitatus Act.

In other areas, the Freedom of Information Act backlog at the DEA has been reduced 74 percent from a 2-year response delay in answering requests to the present, 90-day average time, and it is expected by October that all requests will take no more than 2 weeks to process.

He has instituted a career development program for DEA agents. These are but a few of the significant accomplishments which have occurred under Bud Mullen's leadership of the DEA. Rather than delineate them all, I request that his opening statements at the last two DEA oversight hearings before the Subcommittee on Security and Terrorism, and a list of accomplishments of DEA for the period January 1981 to May 1983, be made a part of this record.

The CHAIRMAN. Without objection, so ordered.

[The following was received for the record:]

DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION

STATEMENT OF THE ACTING ADMINISTRATOR, FRANCIS M. MULLEN, JR., BEFORE THE SENATE JUDICIARY SUBCOMMITTEE ON SECURITY AND TERRORISM

FEBRUARY 23, 1983

Mr. Chairman and Members of the Subcommittee:

I am pleased to have the opportunity to appear before this Subcommittee to discuss the Drug Enforcement Administration (DEA) Authorization request for 1984.

The 1984 request is a continuation of the President's 1983 programmatic thrust to bring additional resources to bear on drug trafficking and is in line with the Attorney General's determination to apply resources in a balanced way across the criminal justice system.

Based on the Attorney General's study of violent crime, a Law Enforcement Coordinating Committee (LECC) was established in each judicial district. The LECCs' identified drug trafficking as the priority problem.

In January 1982, the Department first addressed this need for an increase in our emphasis on drug enforcement and the organized criminal enterprises involved in drug trafficking, by assigning to the FBI concurrent jurisdiction with DEA for investigating violations of the U.S. drug laws.

Further, partially as a result of the success of the President's South Florida Task Force, it was decided to launch a vigorous nationwide attack on the drug trafficking problem.

An "8-Point" plan was announced by the President on October 14,

1982. Subsequently, the Administration's budget amendment, to support the Organized Crime Drug Enforcement program (OCDE), was authorized in the Further Continuing Resolution for 1983 (P.L. 97-377).

Twelve task forces have been established in key areas in the United States. These task forces, under the direction of the Attorney General, will utilize where necessary the law enforcement resources of the DEA, FBI, IRS, ATF, Immigration and Naturalization Service, the U.S. Marshals Service, the Custom Service and the Coast Guard. In addition, in some regions, Department of Defense tracking and pursuit capability will be made available.

These task forces will mount an intensive and coordinated campaign against international and domestic drug trafficking.

1984 Authorization Request

The Drug Enforcement Administration is requesting for 1984 a total of $275,623,000, and 3,988 permanent positions. This request represents an increase of $20,127,000 in funding and 35 positions from the anticipated 1983 appropriation of $255,496,000, and 3,953 permanent positions. This Authorization finances a nationwide operation with field offices in 50 states, foreign operations in more than 40 countries, 8 field forensic laboratories, and Federal/State and local task forces in selected areas.

Program increases amounting to $11,515,000 within DEA's regular 1984 budget will provide for strengthening and modernizing the Foreign Operations, Vehicle, ADP, Radio and Laboratory Services programs.

Further, 250 positions and enhanced ADP capabilities are to be funded within $24,076,000 to be allocated from the OCDE appropriation.

Management of Federal Drug Enforcement

In the Spring of 1982, the Congress was advised of organizational changes to provide greater flexibility in the management of drug enforcement resources within the Department of Justice.

The new DEA/FBI alliance has exceeded our expectations to date. Since the summer of 198.. FBI narcotics investigations have grown from 100 to over 1,000. Investigations involve organized crime, financial crimes, and public corruption. Joint DEA/FBI investigations have increased from a handful to over 300, an example of agency cooperation. The FBI has also dedicated its resources to drug-related Title III investigations, which as you all know, are extremely manpower intensive. In the first six months of 1981, which basically predates direct FBI involvement in drug investigations, DEA conducted 19 Title III electronic surveillances. During the same time frame one year later, with both DEA and the FBI utilizing this approach, there were 55 drug-related Title III investigations initiated, a 244 percent increase!

As a part of our efforts, we have begun cross-training DEA and FBI Agents for better interagency understanding and to make each agency's expertise available to the other.

FBI Special Agent accountants--useful in dealing with the financial end of the drug trade--the FBI's network of informants and experience with long-term undercover operations and organized crime investigations are all important tools brought into this partnership.

DEA and the FBI are also coordinating utilization of the scientific laboratories to make them available to both agencies. Intelligence analysts from both DEA and the FBI have been working closely together to ensure that all intelligence data bases are effectively searched to provide specific targetting information to the agents in the field.

Drug Traffic and Organized Crime

Crime has become increasingly organized and sophisticated. Organized crime has become especially lucrative because of the enormous market for illicit drugs. Drugs and organized crime have combined to wreak havoc on our communities, our lives, and our children's future. Directly or indirectly, it threatens each person and institution in this country. It threatens the fabric of society.

On the human level, the drug problem caused by organized crime is staggering. Drugs victimize not only addicts, but also those innocent citizens whom addicts assault, rob, and burglarize to obtain the large sums of money they need to feed their drug habit. One study demonstrated that over an eleven year period some 243 addicts committed about one half million crimes--an average of 2,000 crimes each or a crime every other day--just to support their habits. In fact, half of all jail and prison inmates regularly used drugs before committing their offenses. According to a Rand study, addicted offenders in California committed nearly nine times as many property crimes each year as non-addicted offenders.

The drug trafficking that creates this flood of crime is itself organized crime. Large-scale drug dealers must organize their operations. They obtain the illicit substances, or the rights to the substances, overseas. Within our borders, the drug dealers have set up elaborate enterprises for cutting the imported drugs and distributing them over wide geographical areas.

And the organization does not stop there. Drug money is laundered through legitimate businesses set up as "fronts" for drug dealers. A share of the profits is then reinvested in the drug business, just like a legitimate major enterprise. Increasingly, some of the profits are actually invested in legitimate businesses, including real estate in Florida, restaurants in California, and other businesses across the Nation.

The popular notion that the syndicate--or traditional organized crime--stays out of drugs is simply not true. Many of the syndicate's families have developed elaborate drug networks. Virtually every one of them is involved in drugs in one way or another.

But the problem of organized crime today is by no means limited to its traditional form. In the past two decades, we have witnessed the emergence of new organized criminal enterprises dealing in drugs and the other rackets traditionally controlled by the syndicate. These emerging groups have entered the drug business, often in competition with traditional organized crime.

Over the past decade, some 800 outlaw motorcycle gangs have developed around the country and in foreign countries--and drugs represent their primary source of revenue. Prison gangs, first established as a result of associations developed in the California State Prison system over the past twenty years, today operate both inside and outside prison and are spreading beyond the West Coast. In addition, there are other emerging groups--such as Southeast Asian groups, the violent Colombian groups known as the Cocaine Cowboys, and other drug cartels.

All of these criminal organizations deal in drugs and use violence. They are secretive, self-perpetuating criminal societies involved in drugs and every other sort of criminal activity. Money is their common objective, and violence is their primary tactic. They control large-scale drug trafficking today, and they are the groups that must be immobolized if we are to control the drug problem.

The massive involvement of organized crime with drugs is, however, only part of the problem. Organized groups of criminals assault and murder each other--and innocent bystanders--in the violent and lucrative world of drugs.

And most serious of all, we see public officials at all levels being corrupted by drug money. We have reports of rural sheriffs and police officers accepting payments of $50,000 or more just to "look the other way" while traffickers make a single landing at a makeshift airport. The dollar amounts involved are so great that bribery threatens the very foundations of law and law enforcement.

United States Government Strategy

The number one crime problem confronting America is narcotics trafficking combined with organized crime. The strategy of the U.S. Government must be to deter trafficking of drugs through increased and consistent punishment, and to assure the certain loss of accumulated profits and proceeds of this criminal enterprise. The Federal Government has made a firm commitment to attack this problem domestically through the major new initiative to establish 12 Regional Task Forces. The President has said: "Our commitment to this program is unshakable--we intend to do what is necessary to end the drug menace and cripple organized crime".

Drug control is an international issue. All of the heroin and cocaine and most of the cannabis available in the United States is cultivated and processed from sources in Southwest Asia, Southeast Asia, South America, the Caribbean and Mexico.

It is important to stop drugs at or as close as possible to their source rather than as they approach or cross United States borders, because quantities seized at the source are much larger and purer and have not entered the expansive distribution chain which ultimately lead to the streets of United States cities.

Consequently, DEA personnel are stationed in foreign countries to support host countries' efforts to eliminate cultivation, production and conversion of drugs and to stop shipments of drugs destined for the United States. These efforts include the provision of technical assistance through training and the exchange of intelligence in cooperative investigations. Stopping drugs within the source country or as close to the source as possible has proven to be an effective approach to reducing the supply of illegal drugs.

Finally, we must also approach the demand issues and make the use of drugs less appealing through better education of the public about the health consequences of drug abuse.

Assessment of the Drug Trafficking Situation

Based on the latest available full year data, we can state that, during 1981, that heroin abuse and availability increased in the New York-Washington, D.C. corridor and on the West Coast. Cocaine abuse continued to expand. Marijuana use peaked among youth in 1979, but may still be rising among older age groups. Abuse of stimulants continued to increase, while a new abuser population that has evolved out of the search for heroin substitutes emerged. Preliminary indications drawn from 1982 data suggest these tendencies continued well into 1982. Although 1982 survey data indicated that the number of current users of illicit drugs dropped significantly between 1979 and 1982, drug related deaths and injuries appear to have increased primarily because of chronic use, increasing dose, the use of combinations of drugs and more dangerous routes of administration (especially for cocaine and herion).

Heroin

Comparing 1981 with 1977 in terms of heroin-related emergencies, the situation deteriorated in New York City, Washington, D.C., Boston, and Philadelphia.

Imports of heroin into the United States remained unchanged from 1980 to 1981 at four metric tons. Southwest Asian (SWA) heroin accounted for over half of the U.S. heroin supply. The share of Southeast Asian (SEA) heroin in total U.S. imports remained stable at an estimated 10 percent despite increased opium production in the Golden Triangle (Burma-Thailand-Laos) following relief from drought. Mexico continues as the major heroin source for the West and Southwest.

Drug smuggling routes and techniques in 1981 were largely unchanged from those employed in 1980. SWA heroin continued moving overland through Europe. SEA heroin continued to enter the United States primarily on a direct route from Thailand to the western states. Importation of Mexican heroin is increasing and continued to enter the United States primarily overland. For the foreseeable future SWA heroin will be readily available in the United States. Mexican heroin is likely to remain dominant in the West and may increase in availability in some distribution centers in the central states. SEA heroin, rarely an aggressive contender, will probably continue to occupy only a minor share of the national market if SWA and Mexican heroin remain generally available.

Cocaine

Cocaine abuse and trafficking activity continued to rise in 1981, although for the most part at lower rates than in 1980. Cocaine-related emergency room episodes increased seven percent and arrests five percent, while treatment admissions apparently continued a rapid climb.

According to NIDA estimates, seven to ten percent of the user population fall into the category of heavy use involving higher levels of purity and lower prices per unit associated with the larger quantities used. Cocaine remains the drug most frequently used by heroin addicts as a secondary drug.

An estimated 34 metric tons of cocaine were consumed in the United States during the year and 75 percent of the cocaine smuggled into the United States came from Colombia.

The drug smuggling routes and techniques in 1981 were largely unchanged from those employed in 1980. Utilizing commercial aviation, smugglers continue to move cocaine from Colombia, through the Caribbean area to the Southeastern U.S.

Because of increasing availability, cocaine abuse is likely to continue to increase. This increase in availability is also expected to lead to the increased use of dangerous forms of cocaine ingestion ("speedballing" and "freebasing"), forms with potentially severe health consequences. Cocaine is expected to remain a popular secondary drug for heroin users.

Cannabis

Marihuana use has peaked among youth, and demand for marihuana in that age group is apparently decreasing, in part because of greater awareness of its health hazards and peer disapproval. Daily use of marihuana among high school seniors was down to the 1975 level of 6 percent or about one in every 16 seniors according to a recent survey funded by the NIDA. The best news said NIDA, was that between 1981 and 1982, high school seniors showed a declining use of nearly all drugs. Marihuana use appears to be continuing among that segment of the population who were heavy users in the early 1970s.

The level of domestic commercial production of marihuana was estimated at 1,000-1,200 metric tons in 1981. High-potency varieties, such as sinsemilla, account for an estimated 40 percent of total output. However in 1982, 1,653 metric tons were seized and destroyed which would indicate that either the 1981 estimate was low, there was a sizable increase in cultivation in 1982 or a combination of both.

Imports of marihuana dropped nine percent in 1981 to an estimated 8,700-12,700 metric tons. Colombia supplied 86 percent of this total.

The principal avenue approach for marihuana smuggling was a route from Colombia through the Caribbean to the Southeastern United States.

For at least several years marihuana use should continue to decline among youth but may remain fairly high among those in the 20-30 year age bracket. Although it is difficult to measure the demand for high-potency marihuana, preference for this type of marihuana is likely to persist and possibly increase among long-time and regular users.

Domestic production of marihuana will continue to spread throughout the country unless it is met with a credible and sustained law enforcement deterrent.

Dangerous Drugs

Stimulant abuse, which continued to increase in 1981, accounted for over four-fifths of the total dosage units of dangerous drugs sold. Because a large dosage of this stimulant is needed to obtain the desired effect, the cost of sustaining this abuse habit is higher than for other types of dangerous drugs.

Abuse indicators reflected the emergence of a new narcotics abuser population using pharmaceutical opiates and narcotics analogs. Initially used as heroin substitutes, these substances are drugs of choice preferred to heroin or used in combination with heroin. The drugs most commonly associated with this abuse pattern are pentazoci (street name: "T's and Blues"), codeine-glutehimide (street name: "Fours and Doors") and hydromorphone (Dilaudid).

Clandestine laboratories supply all of the phencyclidine (PCP), nearly all of the methamphetamines and about 80 percent of the amphetamines found in the U.S. illicit market.

Diplomatic initiatives with the governments of foreign methaqualone producers were instrumental in sharply reducing supplies to illicit channels before 1982.

Continued international cooperation should restrict the supply of bulk methaqualone to the illicit market. This reduced supply will probably result in the continued marketing of diazepam counterfeits as methaqualone. Abuse of the pentazocine and codeine-glutehimide combinations is likely to intensify. Although Dilaudid has also become popular as a drug of choice, it is so much more expensive than pentazocine that its use may not become a major abuse pattern. Mexican "mini-bennies" may return to the illicit U.S. market if amphetamine abuse continues to grow and domestic clandestine laboratories are immobilized.

Effect of Enforcement Efforts

Our enforcement efforts are having a positive effect now. With the increased resources being allocated to this fight we should be able to stabilize drug trafficking and reduce its impact on the lives of our citizens and communities.

Our government's commitment to eradicating the drug abuse problem has been conveyed to authorities at the highest levels in source and transit countries. We have seen many positive results from our overseas efforts.

Heroin couriers have been intercepted in Bangkok as they were about to board flights for Guangzhou (Canton), Peoples Republic of China where a number of narcotics arrests have been made by Chinese authorities.

Chinese authorities have made a number of narcotics arrests in Guangzhou. Evidence indicates that the heroin contraband was destined for Hong Kong.

The Mexican government has continued its aggressive poppy eradication program. However, it must be noted that counter/measures by the opium cultivators, including concealment, smaller plots and the spread of cultivation of new regions, have resulted in a rise in opium production from an estimated 10 tons in 1979 to 14-15 tons in 1980 and 1981. On the other hand marihuana eradication efforts have achieved considerable success.

The Bolivian government stated its intention to implement coca eradication, although no eradication was actually carried out. Peru's program to eliminate illicit coca cultivation in the Upper Huallaga Valley within five years entered into the initial implementation phase. The Colombian National Police and Attorney General's office carried out periodic manual eradication of coca bushes in the Llanos region.

On January 18, 1983, the successful undercover penetration of a major cocaine conversion and distribution organization resulted in the delivery and seizure of 50 kilograms of cocaine HCL to agents in Brazilia. Brazilian Federal police have so far seized properties and vehicles valued at a half-million dollars.

Cooperative activities among domestic Federal agencies have resulted in successes such as:

1. The seizure on March 9, 1982 of approximately 3,748 pounds of cocaine in an air cargo shipment at Miami International Airport.

The seizure was the direct result of information developed by the DEA in the follow-up investigation of a joint DEA-U.S. Customs seizure of 90 pounds of cocaine on February 19, 1982, at Miami Airport from another air cargo shipment.

2. On June 24, 1982, the Drug Enforcement Administration, assisted by U.S. Customs Service, Suffolk County Police, Nassau County Police, and the New York State Police, arrested four defendants in Long Island, N. Y. and seized approximately 614 pounds of cocaine which had been transported from Colombia.

Task forces and operations like GROUPER and TIBURON in the southeastern United States, have demonstrated the utility of coordinated enforcement activity and intelligence sharing.

EPIC

Nine Federal agencies participate at the EL Paso Intelligence Center (EPIC). Forty-nine states or state affiliations are now members of the El Paso Intelligence Center. EPIC continues to provide real-time operational feedback on queries. It has been invaluable to the South Florida Task Force effort, working as a check and relay for the interdiction of suspect aircraft vessels. EPIC supports all our major drug operations and also acts as a clearing house for intelligence regarding aliens and guns.

Posse Comitatus

Along with involvement of the FBI, another major development in the drug enforcement effort has been the involvement of the military in drug intelligence operations. We are only beginning to see the results of this new resource.

In conjunction with the South Florida Task Force and related operations, the Navy E2C's (Hawkeye Aircraft) provide detection capability and Army's Cobra helicopters have been utilized as chase aircraft. The Navy has been regularly and increasingly relaying suspect vessel information to EPIC for evaluation and action. The Navy has provided direct assistance to the U.S. Coast Guard and participated in the boarding and taking custody of a suspect vessel. Coast Guard crews are also onboard some Navy vessels.

We are now working on refining policy and procedures to ensure that the military is fully aware of drug law enforcement's needs and how they can be of assistance nationwide. The Coast Guard is chairing an interagency committee of the DOD, Customs Service, and DEA to funnel requests for military assistance to the drug enforcement effort. We foresee continued equipment and manpower support for vessel and air operations in the Caribbean, for vessel tracking, for surface fleet training, and for marihuana eradication programs in the U.S. in 1983.

Asset Seizures

Enforcement of the laws to ensure that the profits from drug trafficking are reduced has led to action such as:

In Miami, where the government seized and forfeited $9.6 million in assets including a Wisconsin restaurant, five airplanes, eight bowling alleys, 10,000 shares in the Alaska Cable System and a Lamborghini sports car;

In Fort Worth, where the government became co-owner of a steel mill, three banks, six ranches, a chain of Western-wear shops all valued at $2 million and an additional $20 million in Exxon stock; and

In Los Angeles, where the government took over a $1-million home in the hills of Santa Barbara.

In 1982, total seizures reported under the various applicable laws were again up over the preceeding year.

DEA is assisting States to develop laws based on DEA's Model Forfeiture of Drug Profits Act. Eleven States have now passed such legislation and are now putting the proceeds from seized and forfeited property to work for the benefit of law enforcement activities and the community.

Domestic Marihuana Eradication

The domestic marihuana eradication campaign is now an ongoing DEA/State effort. DEA began its model eradication program in 1979 in Hawaii and California and now there are 26 individual state programs in various phases of implementation.

The use of paraquat in the Florida eradication program is a milestone in the domestic marihuana eradication strategy. I hope that where it is appropriate, feasible, and cost effective, other states follow Florida's lead. The use of this herbicide is a clear signal--and one that is needed--to the governments of drug source countries, that the United States is seriously committed to drug eradication.

In 1982, 3,625 separate plots were raided and more than 2 million marihuana plants destroyed.

This program will be expanded during the 1983 growing season and major strides should be made in the next few years.

State and Local Assistance

The investigation of drug trafficking is a joint responsibility of Federal, State and local authorities.

DEA's State and local task force program, wherein we apply about 100 agents and the State and local agencies about 300 officers ensures that there is sufficient activity geared to the violent street-level and mid-level drug trafficking.

DEA can assist the States in other ways, also, to bring positive results in the overall drug abuse problem. We have been providing counsel and prepared model legislation which addresses the drug paraphernalia problem. Approximately 35 states, the District of Columbia and hundreds of municipalities have responded and passed legislation. Recent Supreme Court decisions affirmed the constitutionality of municipal drug paraphernalia statutes which are less restrictive than DEA's Model Drug Paraphernalia Act .

The problem of "look-alike" drugs, over the counter preparations designed to look alike prescription drugs, is very much analogous to the paraphernalia problem. Even though DEA has no authority under the Controlled Substances Act to proceed against these manufacturers and distributors, we have been assisting the states by drafting model legislation to assist in the development of an appropriate response.

Legislation

The 97th Congress fully supported the drug law enforcement effort. As I mentioned earlier, the revision of the Posse Comitatus statute has brought significant assistance from the military, especially in the interdiction effort in the Caribbean. The amendments to the Tax Reform Act have resulted in a more effective working relationship with the Internal Revenue Service. The amendment of the Foreign Assistance Act will permit the State Department to assist foreign countries in herbicide eradication of marihuana. I thank you for your support in securing these significant improvements in legislation. We look forward to working again with you in this Congress to seek needed improvements in the forfeiture, tort claims and freedom of information statutes as well as in bail and sentencing reform.

I also want to mention that your hearings last year relating to Cuban involvement in drug trafficking activities focused law enforcement and public attention on this issue. As you are aware, successful law enforcement efforts resulted in several indictments including high level Cuban officials.

Conclusion

No crime problem is more important than drug trafficking and drug abuse; no problem is more challenging to law enforcement at every level--Federal, State and local.

This Administration has made clear its commitment to drug control and minimizing the crime associated with drug trafficking.

I am confident that the implementation of the initiatives I have discussed today will have significant impact on the problem. I want to acknowledge the continuing support of this Subcommittee and thank each of you for your interest. I will be pleased to answer any questions you may have.

Statement of

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Acting Administrator

Drug Enforcement Administration
U.S. Department of Justice

before the

Subcommittee on Security and Terrorism
Committee on the Judiciary
United States Senate

Jeremiah Denton, Chairman

April 23, 1983

DEA FY-83 Authorization

Mr. Chairman and Members of the Subcommittee: I am pleased to have this opportunity to appear before this Subcommittee for the first time to discuss with you the Drug Enforcement Administration's (DEA) mission, our objectives and our plans for the upcoming year.

Since the DEA last came before the Congress for consideration of its program in conjunction with the Department of Justice's authorization request, there have been several significant changes with regard to our organization. As you are no doubt aware, on January 21, 1982, Attorney General William French Smith announced major revisions in the nation's Federal drug enforcement effort. The purpose of these changes is to promote more effective drug enforcement through coordinated efforts involving DEA, the FBI, the United States Attorneys and agencies from other Departments, where appropriate.

The Attorney General has created a committee that will oversee the development of drug policy and assure that all the Department's resources, including its prosecutorial and correctional efforts, are effectively engaged in the effort against drug trafficking.

Additionally, the Attorney General adopted the recommendations of a committee of Department of Justice officials he appointed last summer to study how the DEA's and FBI's efforts could be better coordinated. Responsibility for the general supervision of drug enforcement efforts has been delegated to the Director of the FBI, so that as DEA's Administrator, I now report to the Attorney General through Director Webster. In furtherance of this relationship, the Attorney General also has moved to involve the Federal Bureau of Investigation in the drug enforcement effort. This will, for the first time, bring the resources of the FBI to bear on the problems associated with drug trafficking.

Assigning the FBI jurisdiction in drug investigations will immediately increase the number of agents available for our mission. DEA will be able to make maximum use of the FBI's wide deployment. In quite a few areas, DEA has small representational offices that will certainly benefit from the manpower and expertise of the FBI. Already, the number of DEA/FBI cooperative cases has increased significantly. There were 15 ongoing joint cases last July; there are now over 150.

No less significant will be the enhancement of investigations into the many other violations that go hand in glove with drug trafficking. Uniting the efforts of DEA and the FBI will afford the government the opportunity to attack the other crimes uncovered in drug investigations, such as organized criminal activities, money laundering, bank fraud and public corruption.

Internally, DEA is moving toward streamlining its Headquarters' programs, adjusting to a drug program management structure, while at the same time we are dismantling the geographic regional structure and advancing to a direct reporting mode. These two actions will make DEA a more effective, less bureaucratic agency and will also provide managers with more resources for field investigations of drug violations.

In short, the greater involvement of the FBI in the investigation of Federal drug offenses, the recent initiative by the Department of Justice to place the highest priority on the coordination of drug investigative efforts involving the DEA, the FBI, the U.S. Attorneys, and other Federal agencies, and our internal reorganization should result in a more efficient use of drug enforcement resources.

My interests and objectives are to keep the United States Government at the forefront of the drug war. The public has entrusted us with their faith to address this insidious problem which is a major cause of crimes against the public. Violent crime associated with drug trafficking is unacceptable; the drug-money induced erosion of our financial and tax structure is unacceptable; the injurious health repercussions our youth are suffering are unacceptable. Clearly, the drug problem is one which requires Federal leadership not only to manage the international and interstate aspects; but also to influence and motivate state and local authorities to implement worthy drug control programs.

The strategy of the U.S. Government must be to make the trafficking of drugs considerably less lucrative in terms of increased and consistent punishment, and to assure the certain loss of accumulated profits and proceeds of this criminal enterprise. We must also approach the demand issues and make the use of drugs less appealing. Finally, we need to better educate the public about the health consequences of drug abuse.

Federal drug law enforcement can act aggressively in several areas:

Internationally

* to stop production at the source
* to assist in the interdiction of drugs and moneys before they penetrate U.S. borders.

Domestically

* to investigate and develop cases at the highest levels of violators
* to strike at organized crime
* to hold to a minimum the availability of controlled substances
* to seize for forfeiture the profits and proceeds of drug trafficking
* to strengthen the cooperative Federal, state and local drug enforcement apparatus to increase the likelihood of law enforcement activity at all levels of drug trafficking.

I think it needs to be said that the efforts of DEA have had a demonstrable impact in protecting the American public from the dangers of drug abuse. This success over an extended period of time is the result of following the U.S. national strategy of placing first priority on heroin suppression.

Heroin availability and subsequent abuse continue at relatively low levels compared with record high levels as recently as 1976. We accurately predicted increased supply and trafficking in Southwest Asian heroin, which has allowed time for adequate planning and shifting of resources to prevent the influx from seriously afflicting the U.S. population. We have had unprecedented international success in penetrating drug trafficking networks and disabling their conversion laboratories at overseas locations in Italy and the Middle East and thus preventing the converted heroin from reaching the U.S. population.

Attacking the illicit trafficking in dangerous drugs is also a priority objective. This facet of drug abuse, although perhaps the least publicized component of our total operations, is no less a vital element in our strategy. Sixty to seventy percent of all deaths and injuries from controlled substances are associated with legally-produced drugs. Our international efforts directed toward control of bulk shipments of pharmaceutical material have had significant results. Domestically, our initiatives are targetted at controlling diversion of drugs from legitimate handlers, particularly practitioners. Overprescribing and misprescribing are problems of diversion that are recognized by health professionals as warranting attention. Mobilizing the resources of the business community in the area of diversion of legitimate drugs will be a major component of a Federal strategy.

Clandestine laboratories are another source of dangerous drugs. These laboratories are located both in the U.S. and in neighboring countries. The continued monitoring of precursor chemical shipments and increased emphasis on international shipments will aid in impacting on this problem.

Cocaine and cannabis trafficking seem to be relentless. Our multi-faceted enforcement operations, such as the recently concluded Operation Tiburon III, remove vast amounts of these drugs from the marketplace. However, without meaning to detract in the least from the accomplishments of this enforcement campaign, we need to have effective controls on the illicit cultivation of these substances. Control at the source must be a pillar of the U.S. drug strategy foundation. All the coca leaves are cultivated on foreign soil; all but

7 percent of the cannabis is cultivated beyond our shores. A strong, viable international program is critical to the realization of a measurable impact on the supply of these drugs and the narco-dollars that grow and multiply as a result of the market for cocaine and marihuana. Eradication, crop substitution, income subsidies and enforcement actions need to be accelerated.

DEA's lead agency role overseas of working actively with counterpart agencies has been highly effective and must be continued. This effort includes technical assistance in eradication, cooperative investigations and legislative proposals, the provision of training, and the exchange of intelligence. We are seeing the results of our investment in the international program. We called upon our counterparts in West Germany and Italy to act forcibly against the Southwest Asian heroin problem. They both responded swiftly and helped contain this heroin threat. We are prepared to work more diligently to achieve our program goals.

However, we will need the support of the Congress to help convince the leadership of drug-source nations that the United States is firmly and irrevocably supportive of drug control abroad and at home.

To effectively persuade foreign governments to act on drug control, the Federal Government must combine a convincing domestic program with a consistent diplomatic program. Strong coordination must be established to ensure that all aspects of U.S. policy support our drug control interests overseas. Advancement of a firm domestic marihuana control program is a needed demonstration of this commitment. We are actively involved with marihuana source states to develop and implement domestic eradication programs.

Domestically, our commitment to working with the Federal law enforcement community has never been stronger. In these austere times, we have all recognized the need for further enhancement of cooperative endeavors. We are maintaining a strong emphasis on interagency activities with the Customs Service, the Coast Guard and the rest of the Federal enforcement community. I believe we will be seeing an acceleration in the number of interagency, high-level investigations.

The El Paso Intelligence Center (EPIC) has a vital place at the heart of our operations. EPIC is an interagency operation supported by DEA, the FBI, Coast Guard, Immigration and Naturalization Service, U.S. Customs Service, Bureau of Alcohol, Tobacco, and Firearms, Federal Aviation Administration, U.S. Marshals Service and the Internal Revenue Service. EPIC also has working agreements with 46 state law enforcement agencies and the Virgin Islands. As the number of participating agencies has increased, the reliability of EPIC's products and services has been recognized by consumers and, as a result, the increase in demand for EPIC's services has been significant. With drug enforcement emphasis on international operations, conspiracy cases and financial investigations, EPIC's workload has become more complex. As a result of the enactment of the Department of Defense Authorization Act, 1982 (P.L. 97-86) on December 1, 1981, the Federal effort can look forward to increased military assistance in drug smuggling incidents and cases, which should provide for further enhancement and utilization of EPIC's capabilities.

Thus far, I have discussed our major program directions and, in so doing, I have left unstated the critical components of DEA's activities which support our enforcement program and provide the DEA agents with the needed tools of the trade.

Support operations activity encompasses: our strategic and tactical intelligence program; laboratory analysis of evidence in support of investigations prosecution of drug traffickers and support of state and local operations; training programs for all levels of DEA operational personnel, state and local personnel, and foreign officials; and maintenance of an effective technical equipment program, including aircraft operations to support increasingly complex high-level investigations. The individuals who staff these vital functions are extraordinarily committed to supporting our agents and the DEA mission.

For years, DEA has done fine work at home and abroad. In my nine months as Acting Administrator, I have been pleased at the obvious dedication and professionalism of the staff and the continued effectiveness of the enforcement effort. I am confident that an infusion of FBI resources to supplement those of DEA will aid immeasurably in our national drug enforcement effort. Through a unified effort involving DEA, the FBI, prosecutors and others, we will have the resources and the expertise to attack the upper echelons and the financial structures of the nation's large drug trafficking organizations.

The new unified DEA/FBI effort, however, is only one part of the Administration's concerted program to impact on the flow of drugs into the United States and on those who control and profit from drug trafficking. With statutory restrictions clarified, the Administration is now implementing a program to involve the military in lending equipment, such as radar, to civilian law enforcement and passing on information related to drug smuggling. The Treasury Department is establishing a financial intelligence center in Florida designed to follow and seize the millions of dollars in profits which are transitting banking institutions in Florida.

In addition, the Administration is marshalling into Florida investigative resources from around the country, including FBI, DEA, and Customs officers, to exert more enforcement pressure on the trafficking organizations. The Vice President is directing a special task force to coordinate the Administration's program. .

The control of the drug problem requires action by every level -- individuals, organizations, local and state government, and the Judicial, Legislative and Executive Branches. Legislative initiatives in the areas of criminal forfeiture, bail, and sentencing are essential to these integrated enforcement efforts. We look forward to your support of our agenda.

This concludes my statement, Mr. Chairman. I shall be pleased to answer any questions you or other members of the Subcommittee may have.

DRUG ENFORCEMENT ADMINISTRATION
SUMMARY OF ACCOMPLISHMENTS IN
REDUCING DRUG ABUSE AND DRUG TRAFFICKING

January, 1981, through May, 1983.

DRUG ENFORCEMENT

1. The FBI was given concurrent jurisdictional powers in January 1982, to conduct drug investigations, adding a new dimension to investigations targetted at organizations engaged in a wide range of criminal activity.

2. There has been a dramatic increase in the number of cooperative drug cases investigated jointly by the DEA and FBI. In July, 1981, there were 12 joint cases; in June, 1983, there were approximately 450 joint investigations. Additionally, the FBI has provided support for monitoring Title III electronic surveillances, which is a very manpower-intensive operation.

3. The domestic enforcement program arrested 12,897 violators in 1981, the largest yearly total since 1977. 1982 arrests totalled 12,640, of which 2,122 were major violators.

4. Structurally, the reporting relationship for DEA has been changed to give the Director of the FBI general supervision over drug law enforcement. This will achieve a significantly higher degree of coordination and effectiveness in our efforts. The DEA has also been reorganized to centralize management for improved efficiency. Overall, these efforts will bolster the results that can be achieved from our limited resources.

5. Legislation has been introduced to strengthen Federal bail and sentencing provisions and amend the Freedom of Information and Privacy Acts and the Tax Reform Act of 1976 which makes drug related financial investigations unreasonably difficult.

6. In March,1982, DEA joined and directed the Florida Joint Task Group of the Vice President's Task Force on Crime in Florida, with a commitment of 65 Agents, four Intelligence Analysts, and seven support personnel. Working together with the U.S. Customs Service, the Task Group has targetted the flow of marihuana, cocaine and methaqualone through Florida. By the week ending April 27, 1983, the South Florida Task Force was responsible for 1,274 arrests and seizures of thousands of pounds of cocaine, marihuana and methaqualone.

7. ,Another special operation, Operation Tiburon, was conducted in three phases and resulted in the seizure of 70 vessels and more than 840,000 pounds of marihuana. This operation was concluded in February 4, 1982.

8. DEA conducted a high-impact enforcement strategy during this period which included immobilizing major traffickers and the seizure of the assets of their organizations, increased cooperative enforcement operations, and enhanced source country drug programs. This effort was highlighted by numerous special enforcement operations. Operation Grouper was a highly successful cooperative enforcement effort of the DEA, the U.S. Customs Service, the U.S. Coast Guard and Florida state and local agencies which severely disrupted maritime drug trafficking

in the South Florida area and resulted in 127 arrests, 45 of which were high-level violators.

9. Asset seizure and forfeiture efforts were increased through the establishment of Drug Removal Coordination Units to identify assets for potential forfeiture and assist joint prosecutions by DEA with the Internal Revenue Service, the FBI and the U.S. Customs Service.

10. The DEA/Customs Integrated Airport Program resulted in a 128 percent increased in heroin and cocaine seizures at program airports, and was expanded throughout the United States as the Integrated Border Enforcement Program.

11. Domestic diversion control efforts saw the implementation of the Targetted Registrant Investigation Program (TRIP). Through this program, the most serious registrant violators, who are involved in diversion, are identified for investigation each year. New criteria have been established for DEA's cyclic investigations of registrants to concentrate efforts against "high-risk" registrants, with less extensive investigations for firms which have historically complied with regulations or are not vulnerable to diversion.

These new procedures have resulted in increased resources available for TRIP.

12. A notable special operation was CENTAC 25, which was concluded in May 1982. This was a concentrated conspiratorial investigation designed to immobilize a major Southwest Asian heroin organization linked to organized crime. There were 76 arrests in the United States, 66 of them Class I and II violators, and 57 arrests by cooperating police in foreign countries including 37 high-level violators. Removals of high-grade heroin totaled 110 pounds.

13. The Foreign Assistance Act prohibition against foreign aid for the use of herbicidal eradication of marihuana was repealed in December, 1981, demonstrating to source nation counterparts that the United States is committed to eradication and control of the drugs at the source.

14. Significantly, a statutory exception has been provided to the restrictions on military assistance to civilian law enforcement as codified in the Posse Comitatus Act. The Department of Justice with representation from the Federal enforcement community, and the defense establishment have developed a mechanism to involve military resources. The best demonstration of the effectiveness of military assistance has been in the Vice President's Florida Task Force effort. The exception was approved by Congress in December, 1981.

15. DEA has been supporting the state and local effort to control the proliferation of drug paraphernalia outlets by providing counsel and model legislation drafted by DEA. Two Supreme Court actions in March, 1982 have affirmed the constitutionality of state statutes based on the Model Drug Paraphernalia Act.

16. DEA's training program relocated to the Federal Law Enforcement Training Center (FLETC) at Glynco, Georgia during 1981. Use of the training resources of other agencies at FLETC enable DEA to reduce the number of personnel and continue to provide training to state, local and foreign enforcement officials.

17. Swordfish — Operation Swordfish, an undercover investment firm to launder drug smugglers' money, resulted in the indictment of 62 people and the seizure, over 18 months, of at least 96 kilograms of cocaine,

250,000 methaqualone pills and $1 million in cash. The investigation was completed in October,1982.

18. On October 19, 1982, teams of DEA and FBI agents climaxed an 18-month investigation with the arrests of John DeLorean, William Hetrick and Steve Arrington in connection with a multi-million dollar cocaine conspiracy.

19. On November 4, 1982, a major New York based trafficking organization that has been bringing into the U.S. large amounts of high-grade heroin was immobilized, climaxing a 16-month investigation. Among the major defendants arrested were Oreste Abbamonte and Joseph Del Vecchio, closely linked to organized crime families in New York.

20. DEA and the Detroit Police Department on December 7, 1982, broke up an organization known as Young Boys Inc., a major heroin distribution ring using teen age couriers, with 24 arrests and the seizure of $1.3 milliion.

21. On December 10, 1982 FBI Director Webster announced the arrests of 13 defendants in the New York area, all closely linked to organized crime, and the immobilization of a ring responsible for smuggling an estimated 15 per cent of the heroin into New York. Among the major defendants was Dominic Tufaro, one of DEA's most sought fugitives. The investigation was a joint DEA/FBI effort.

22. On December 20, 1982, DEA agents, working with other Federal, state and local authorities in South Carolina, seized 955 pounds of cocaine in Sumter, S.C., and arrested six defendants. The seizure was one of the largest ever and the cocaine was valued at $325 million.

23. On January 17, 1983, DEA agents — working with the FBI, Customs and local officers, seized 430 pounds of cocaine being smuggled ashore in San Francisco, California, from a Colombian freighter. Twelve defendants were arrested.

24. On Janaury 20, 1983, Attorney General Smith announced that the 12 new Organized Crime Drug Task Forces were in place and that personnel assignment and case selection were underway. Mr. Smith also announced that the task forces would be fully operational in the 12 core cities by August, 1983. Those cities are Baltimore, New York, Boston, Atlanta, Houston, St. Louis, Chicago, Detroit, Denver, Los Angeles, San Diego and San Francisco.

25. One of the largest seizures of Southeast Asian heroin in the United States was effected on March 19, 1983, when about 80 pounds of heroin were discovered by a U.S. Customs enforcement team in Oakland, California. The estimated value of this seizure was set at about $58 million retail. DEA arrested two Thai nationals who were charged with possession with intent to distribute heroin.

26. On April 20, 1983, in Houston, Texas, a special DEA case called "Operation Bushmaster" resulted in the indictment of 60 defendants. Indictments followed a one-year investigation of a trafficking organization that dealt in heroin, cocaine, methamphetamine and other dangerous drugs. The organization was unique in that it imported as well as manufactured drugs. It operated in eight states, Mexico and Guatemala.

27. The conclusion of a joint two-year investigation by DEA, the FBI and Metropolitan Police was announced in Washington, D.C. on April 22, 1983. Fourteen defendants, including prominent attorneys,

were indicted and charged with conspiracy to distribute heroin. The organization was responsible for heroin sales that totalled millions of dollars annually since 1978.

28. DEA and FBI agents in Philadelphia announced on April 25, 1983, the seizure of an operational methamphetamine laboratory capable of producing 60 pounds of methamphetamine weekly with a wholesale value of $600,000.

29. On April 28, 1983, a two count indictment charging Colonel Luis Arce-Gomez, the former Bolivian Minister of the Interior, with conspiracy to smuggle cocaine into the U.S. was announced in the Southern District of Florida. The indictment alleges that Arce-Gomez conspired with 17 others to ship hundreds of pounds of cocaine to the U.S. for distribution and sale.

Senator DENTON. Mr. Chairman, this country is fortunate, indeed, to have a man of Bud Mullen's caliber in a position of leadership, a man whose career reminds me of the promise of America, that through hard work and determination, one has the opportunity to attain the highest pinnacle in any field. Such hard work and determination would be evident to anyone who reads through the material that I have asked to be included in the record. Mr. Mullen has really shown himself to be a man of remarkable achievement and hard work.

Bud Mullen has accomplished this feat in the law enforcement profession by working his way through college, beginning as a patrolman in local enforcement and rising through the Federal law enforcement ranks to the top position of the Drug Enforcement Administration.

I will sum up by saying he is a man of character, leadership, integrity, and natural ability, who has demonstrated his competence in leading the DEA for 2 years during a critical period of transition.

He has been most cooperative with our subcommittee, forthright and candid, as together we have assessed and discussed both the strengths and weaknesses of the agency. He has done the job and done it well. He understands the problems of the agent on the street, as well as the intricacies of the governmental bureaucracy at the highest level. Testimony from various agencies involved in drug and law enforcement indicates that cooperation and coordination between the DEA and these other agents has never been better.

I heartily endorse his nomination and hope that my colleagues on this committee will see fit to do the same, after due deliberation of the matters which my respected chairman of the Labor Committee has brought forward. I think he is doing so with charity, with a sense of duty, and again, with discrimination in the sense of being careful about another's point of view.

I cannot help but believe that one of the things we may be overlooking, or may be difficult for us to comprehend, is the amount of paperwork that Mr. Mullen must have seen and the difficulty of trying to choose that which is significant and has not yet been reported through other means, such as the summaries to which he referred. But I am not going to get involved in that. I trust that

Senator Hatch will come to the proper conclusions about all that. I would just say that that should be considered as one matter, and that his qualifications and his other distinctions should be considered with their proper weight.

Is it proper now for me to ask questions, Mr. Chairman?

The **Chairman**. Yes, it is.

Senator **Denton**. Mr. Mullen, under oath, did you on your own behalf or acting under the direction of others in the FBI, the Department of Justice, or the White House, ever consciously attempt to conceal or withhold from the U.S. Senate or the Committee on Labor and Human Resources, information which would have been relevant within the meaning of Executive Order 10450 and Bureau guidelines and which would pertain to the suitability of Mr. Donovan to be Secretary of Labor?

Mr. **Mullen**. Senator Denton, I never consciously withheld information in order to mislead a committee. I was never asked to do so by anyone, nor would I do so, if asked by anyone.

Senator **Denton**. I was absent voting, but I am informed that Senator Metzenbaum implied that you did not bring to the attention of the Labor Committee allegations of Mr. Donovan's alleged ties with both business and social, to organized crime, but that you, I think, in your own testimony said you thought you did so, in your opening statement. I have your opening statement before the Labor Committee on January 27, 1981, in which you said, on page 254 of the hearings as follows:

> Subsequently, information was received from three sources in New York, indicating that the Schiavone Construction Company and Mr. Donovan allegedly had social and business contacts with organized crime figures. These sources could not provide any information to show criminal misconduct by Mr. Donovan, but did relate his company was reputed to have mob connections because of the social and business relationships which reportedly existed with organized crime elements.

In your own opinion, do you believe that, in the question asked by Senator Metzenbaum, implying you did not bring certain information to the attention of the Labor Committee, do you feel that the quote from your opening statement proves that you are innocent of such a charge?

Mr. **Mullen**. I do believe that to be the case. I believe the essence of the allegations was furnished in my opening statement, and I would ask that that be included in the record in response to the Senator's observation.

Senator **Denton**. I would just request of the chairman that the quotation which I read from the opening statement before the Labor Committee—the full opening statement of Francis M. (Bud) Mullen, Jr.—be included in the record as part of the answer to Senator Metzenbaum, regarding the implication that Mr. Mullen did not mention, or bring to the attention of the Labor Committee, allegations regarding Mr. Donovan's alleged ties to organized crime.

The **Chairman**. Without objection, so ordered.

[The following was received for the record:]

ing his tenure as Secretary. That is to be expected. But I believe we can work together because in his career Mr. Donovan has shown that he also has a reputation for fairness and honesty, a reputation he can put to good work for the country as Secretary of Labor.

Mr. Chairman, if the committee confirms him, as I hope you will, and I have the opportunity on the floor. it is my intention to support him and to vote for him.

Mr. Chairman, that is my statement of introduction of Mr. Donovan again to the committee, and I thank the chairman for giving me the opportunity to come here today and to make that statement.

The CHAIRMAN. Thank you, Senator Bradley. We appreciate that.

At this time we will excuse Senator Bradley, who has very busy duties here in the Senate, and thank him again for taking time out of his busy schedule in being here. Mr. Donovan, we will ask you to step aside for a few minutes while we call the representatives from the FBI: Mr. Francis M. (Bud) Mullen, Jr., the Executive Assistant Director of Investigations, Federal Bureau of Investigations here in Washington, D.C., who will be accompanied by Mr. Charles P. Monroe and Mr. Anthony Adamski, Jr.

Mr. Monroe is Assistant Director, Criminal Division, Federal Bureau of Investigation here in Washington. Mr. Tony Adamski, Jr. is Unit Chief, Special Inquiry Unit, Criminal Investigative Division, Federal Bureau of Investigation.

We are happy to welcome you gentlemen to be with us today. I understand you have a statement, and we will have some questions concerning the report which I understand Senator Kennedy has distributed here this morning.

STATEMENT OF FRANCIS M. (BUD) MULLEN, JR., EXECUTIVE ASSISTANT DIRECTOR, INVESTIGATIONS, FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, D.C., ACCOMPANIED BY CHARLES P. MONROE, ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, D.C., AND ANTHONY ADAMSKI, JR., UNIT CHIEF, SPECIAL INQUIRY UNIT, CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, D.C.

Mr. MULLEN. Thank you, Senator. I appreciate this opportunity to appear before the Committee on Labor and Human Resources to respond to any questions concerning the background investigation conducted on Raymond J. Donovan by the FBI. I do have a brief statement to make and then will be available for any questions the committee may want to ask.

The FBI initiated its investigation of Mr. Donovan based on a request from the Office of the President-elect on December 30, 1980. A check of FBI records at that time revealed no information identifiable with Mr. Donovan. It was determined that the Schiavone Construction Co. was, among numerous others, a subject of a Labor Management Relations Act of 1947—racketeer influenced and corrupt organization——

The CHAIRMAN. Sometimes referred to as RICO; so we can refer to that hereon in as RICO.

Mr. MULLEN. Very good.

It was determined that the Schiavone Construction Co. was, among numerous others, a subject of the Labor Management Relations Act of 1947—racketeer influenced and corrupt organization—investigation involving allegations a union president has misused union pension and welfare funds and received extensive kickbacks for approving loans and awarding "sweetheart" contracts. Mr. Donovan is not a target of this investigation and has not been contacted concerning it. Other Schiavone officers have been interviewed.

The records of the Schiavone Construction Co. were also subpenaed by a Federal grand jury in New York in connection with another RICO investigation. This investigation, in part, concerns the fraudulent establishment of a minority business enterprise by certain individuals, and the use of services of a subcontractor who is an alleged minority business enterprise by Schiavone Construction Co. Neither Mr. Donovan nor Schiavone Construction Co. is the target of this investigation.

During the initial background investigation which covered Mr. Donovan's adult life since high school, 49 persons, including coworkers and supervisors, neighbors, references, and professional associates as well as social acquaintances were interviewed. All made favorable comments and highly recommended him for a position of trust and responsibility.

Subsequently, information was received from three sources in New York indicating that the Schiavone Construction Co., and Mr. Donovan, allegedly had social and business contacts with organized crime figures. These sources could not provide any information to show criminal misconduct by Mr. Donovan, but did relate his company was reputed to have mob connections because of the social and business relationships which reportedly existed with organized crime elements.

In addition, Ralph Picardo, a protected Government witness who has testified in four successful organized-crime-related prosecutions, provided allegations that he, Picardo, received payments for fraudulent equipment rentals from an individual he knew as Ray at Schiavone Construction Co., and identified from a newspaper photograph as Ray Donovan. These payments were allegedly made in 1965 and 1966 during which he met Ray on three or four occasions but received payments from others as Schiavone for a total of approximately 10 occasions.

Mr. Picardo also alleged that Sal Briguglio, whom he described as an organized crime figure, told him these payments were for labor peace, and that Sal Briguglio also told him during 1969 or 1970 Ray was making direct cash payments to Briguglio. It should be noted that Briguglio was the victim of a gangland-style slaying in 1978.

Other allegations raised by Mr. Picardo concerned payments by Schiavone for labor peace at a New Jersey Port Authority landfill, payment for concrete dividers never delivered to a Schiavone Construction site doing work on the Long Island Expressway, and observation of Ray with Sal Briguglio and Tommy Eboli, another reputed organized crime figure, at a restaurant in Fort Lee, N.J. Mr. Picardo was brought to Washington, D.C., and, during an interview attended by staff members of this committee, repeated his allegations.

Based on this information, additional inquiries were conducted by the FBI concerning Mr. Donovan, the details of which have already been furnished to the committee. As you are aware, this is a background inquiry, not a criminal investigation. In a background inquiry, the FBI, without the benefit of compulsory process, must rely on the cooperative spirits of the persons contacted and, during these contacts and interviews, officers of the Schiavone Construction Co. have been very forthcoming in providing information and records. Their cooperation in this effort has been excellent and extensive business records were made available.

The FBI utilized 26 special agents, including three accountants, one of whom was a CPA, in reviewing the records of the principal Schiavone enterprises, these being Schiavone Construction Co., Schiavone Equipment and Schiavone Buckley, a joint venture formed in May 1967. Records examined included 20 cash disbursement journals, 90,000 canceled checks and an equal number of invoices for the period 1965–1970. Records were available to cover all periods in question, and where gaps appeared, documents from one source filled in the period missing from another source. No records were located relating to the transactions alleged by Mr. Picardo, and the prospect of them being in any missing records is considered extremely remote.

Additional interviews were conducted with officers and other employees of the Schiavone Construction Co., and no information has been received indicating any knowledge of activity on the part of Mr. Donovan or anyone else concerning payoffs for labor peace. Photographs of Mr. Picardo and Sal Briguglio were exhibited to them, but they could not identify these individuals. Other persons associated with Mr. Picardo in the past were contacted and provided no information to substantiate Mr. Picardo's relationship with Mr. Donovan, although some of these individuals are suspected of criminal activity and could be expected to be less than cooperative with the FBI. Information was received that Mr. Picardo did pick up payments at various locations and deliver them to a union hall. Mr. Donovan or the Schiavone Construction Co., were not identified with such activity, however.

In all, 75 persons were interviewed during this additional investigation making a total of 124 contacted in the entire investigative effort. Mr. Picardo has furnished information in the past which has proven reliable and which has been substantiated. He has been a witness in four successful prosecutions where his testimony has been accepted. In this instance, however, the inquiries conducted to date, on the basis of the material developed, do not corroborate his allegations against Mr. Donovan or the Schiavone Construction Co.

In conducting this overall investigation, 62 special agents, 8 supervisory personnel and other support personnel utilized over 1,400 manhours in interviewing individuals, reviewing records, and correlating information. The investigation took place in 14 field offices and at FBI headquarters.

During this investigation the FBI also contacted 20 informants and protected witnesses, 12 in New York and 8 in New Jersey. No information of pertinence that is not in our report was developed concerning Mr. Donovan or the Schiavone Construction Co.

Since 1969 the FBI in New Jersey has conducted an extensive number of court authorized title III electronic surveillances involving organized crime or labor-related matters. As review of the results of this coverage reveals no reference to Mr. Donovan or the Schiavone Construction Co.

In summary, the FBI has conducted a thorough, exhaustive inquiry within a limited period of time and has reviewed an extensive amount of records made available to us. This investigation has been the most extensive of any current Cabinet nominee. We have reviewed every allegation that has been provided to us and have conducted additional invstigation whenever the allegations were sufficiently specific to warrant it. This additional investigation did not develop information to substantiate the allegations made against Mr. Donovan.

This concludes my prepared statement. I am now available to answer any questions that you may have.

The CHAIRMAN. Thank you, Mr. Mullen. We appreciate the cooperation of the FBI and the expeditious way you have conducted this investigation.

As I understand it, you conducted an investigation prior to our first hearing on January 12 and the day after the hearing we received new information from your informant. We then requested a thorough investigation concerning that information. As you investigated it further, you found other informants and some other people bringing forth allegations and you investigated them, is that correct?

Mr. MULLEN. That is correct.

The CHAIRMAN. You have indicated here today that your investigation has investigated a total of 124 individuals contacted basically through your entire investigative effort, is that correct?

Mr. MULLEN. That is correct, Senator

The CHAIRMAN. I believe that you have talked in terms of 20 informants?

Mr. MULLEN. That is correct.

The CHAIRMAN. Describe what you mean by informants.

Mr. MULLEN. Informants in this case or any case are individuals who are knowledgeable regarding organized crime activity in the construction industry in the New York-New Jersey area. These are individuals who are furnishing information to the FBI on a continuing basis; and of the 20, all are known to have furnished reliable information in the past.

The CHAIRMAN. Were any of those 20 informants what are called protected witnesses?

Mr. MULLEN. That is correct.

The CHAIRMAN. Would all 20 be protected witnesses?

Mr. MULLEN. No; perhaps 2 of the 20.

The CHAIRMAN. What do you mean by protected witnesses?

Mr. MULLEN. These are witnesses who have testified or furnished information concerning organized crime which endangered their lives and required that they be placed in protected custody, given a new identification, and relocated to another part of the country.

The CHAIRMAN. Of the 20, 12 were in New York and 8 in the New Jersey area, is that correct?

Mr. MULLEN. That is correct.

The Chairman. Now, you have conducted also since 1969 an extensive number of court-ordered title III electronic surveillances involving organized crime or labor-related matters?

Mr. Mullen. That is correct.

The Chairman. These are commonly called wiretaps, is that correct?

Mr. Mullen. That is correct.

The Chairman. You have had to go to court to get permission to conduct these wiretaps?

Mr. Mullen. In each instance; that is correct.

The Chairman. Could you give us the approximate number of those wiretaps that you have conducted?

Mr. Mullen. Senator, I can give that, and, in fact, have given it to you in closed session.

The Chairman. Would you prefer not to give them?

Mr. Mullen. I would prefer not to, I would prefer not to let them know what we are up to.

The Chairman. Can I say it involves wiretaps in the hundreds?

Mr. Mullen. Yes, sir; you can.

The Chairman. So there have been an extensive number of wiretaps?

Mr. Mullen. That is correct.

The Chairman. Concerning organized crime in this area?

Mr. Mullen. That is correct.

The Chairman. Concerning organized crime influence in the construction industry?

Mr. Mullen. Not all pertain to this, but some certainly do.

The Chairman. And concerning union crime and union organized crime influence in this area?

Mr. Mullen. Concerning union and organized crime activity, that is right.

The Chairman. Your unit has investigated every one of these wiretaps and the information and data on them, and is it correct to say you have found absolutely nothing pertaining to Schiavone Construction Co.?

Mr. Mullen. That is correct, Senator. In each case when we do have a court authorized wiretap we must record the identity of every individual or company referred to. We maintained those records, known as overhears, and we located no reference to Mr. Donovan or Schiavone Construction Co.

The Chairman. Neither Mr. Donovan nor Schiavone has been mentioned in any of these investigations?

Mr. Mullen. That is correct.

The Chairman. You say that the FBI has conducted a thorough exhaustive inquiry within a limited period of time, reviewed extensive records made available to you, and that it has been the most extensive of any current Cabinet nominee?

Mr. Mullen. That is correct.

The Chairman. It is my understanding that during your investigation Schiavone Construction Co., without legal obligation to do so has completely opened up its books and records to you, is that correct?

Mr. Mullen. That is correct, Senator.

The Chairman. How many years of books and records does the company normally keep?

Senator DENTON. Thank you, Mr. Chairman.

The CHAIRMAN. The distinguished Senator from Utah.

Senator HATCH. Thank you, Mr. Chairman.

Let me see if I can get this resolved, because I still have some questions on it. Let me go to the actual newspaper article—do you have a copy of that there——

Mr. MULLEN. I believe I do.

[The following newspaper article was received for the record:]

[From the Washington Post, June 6, 1982]

FBI WITHHELD FACTS IT HAD ON DONOVAN

(By George Lardner, Jr.)

The FBI knew that Secretary of Labor Raymond J. Donovan had been mentioned on an organized crime wiretap at the time of Donovan's confirmation hearings, and withheld that information from the Senate committee considering his appointment.

Francis M. (Bud) Mullen, Jr., who was FBI executive assistant director for investigations, said he made the decision on the grounds that the conversation was "not pertinent" to the bureau's Donovan inquiry.

That inquiry was aimed at determining whether Donovan had violated any laws or had ties to organized crime, as some informers had alleged.

Mullen, however, defended his actions by saying that the wiretapped conversation in question "didn't indicate any criminality on the part of Ray Donovan."

Mullen made his remarks during a lengthy interview last week in his offices at the Drug Enforcement Administration, where he is now acting administrator. His role in the Donovan investigation and his testimony about it before the Senate Labor Committee last year have come under increasing scrutiny as allegations concerning Donovan continue to unfold.

The FBI, it was learned from other sources, is sending out new instructions for background investigations in an effort to remedy some of the shortcomings of the Donovan probe and "clarify what is expected of the bureau."

But Mullen said he had no regrets over his actions in the case, and said he would withhold the information about the wiretap again if he had to do it all over.

The conversation in question took place in 1979 between William P. Masselli, a reputed Mafia soldier who was the target of an intensive FBI wiretapping and surveillance operation, and his son, Nat. It dealt with an invitation Masselli had gotten to fly to some still unidentified social event with "Ray Donovan" and "Ronnie" Schiavone, Donovan's partner in the New Jersey construction business.

The agents in charge of the New York Masselli inquiry, which reportedly had produced 1,600 hours of recorded conversations, including many that had not been transcribed, notified FBI officials in Washington of the "Ray Donovan" conversation in January, 1981, on the eve of Donovan's first Senate hearing.

Mullen said he and aides in the Special Inquiry Unit (SPIN), which was conducting the Donovan background check, made the determination not to tell the Senate committee of the wiretap partly because it [the Masselli inquiry] was "an ongoing investigation."

He said some of the material it had churned up already had been presented to a grand jury and, under the Federal Rules of Criminal Procedure, could not be released outside law enforcement agency circles without a court order.

FBI officials here, however, made no effort to determine if the Donovan conversation was covered by the grand jury secrecy rule. Mullen said he discovered later that it was not. But he still defended the decision not to tell the Senate committee. FBI Director William H. Webster, Mullen added, was not involved.

"I made that decision consciously," he said in one exchange with three reporters present. "I didn't want to open up that whole area, because in my judgment that conversation was not pertinent."

Q: "Not pertinent to what?"

Mullen: "To the special inquiry we were conducting. It didn't indicate any criminality on the part of Ray Donovan."

Q: "Weren't you also investigating associations, Donovan's alleged associations with the mob?

Mullen: "Yeah, that didn't . . . . [pause] To me at the time, the judgment was that didn't tie him to the mob."

Q: "But it wasn't even pertinent to the investigation, even though you're investigating associations? That reference wasn't pertinent?"

Mullen: "That's right."

In his prepared testimony before the Senate committee on Jan. 27, 1981, Mullen carefully confined his remarks about "electronic surveillances involving organized crime or labor-related matters" to "New Jersey," and said, "A review of the results of this coverage reveals no reference to Mr. Donovan or the Schiavone Construction Co."

But then Chairman Orrin G. Hatch (R-Utah) began the questioning, asking about FBI informers in the New York and New Jersey area who had been inteviewed, then moving on to general questions about "the hundreds" of organized crime and labor-related wiretaps and electronic surveillances the FBI has conducted since 1969.

Hatch then asked: "Your unit has investigated every one of these wiretaps and the information and data on them, and is it correct to say you have found absolutely nothing pertaining to Schiavone Construction Co.?"

"That is correct, Senator," Mullen replied. "In each case when we do have a court-authorized wiretap, we must record the identity of every individual or company referred to. We maintained those records, known as overhears, and we located no reference to Mr. Donovan or Schiavone Construction Co."

Asked about that exchange in the interview, Mullen said he was still mentally limiting his remarks to wiretaps "in New Jersey," even though he didn't explicitly say so.

"Maybe I did it in my head, but I did it," he said, "because I specified New Jersey there at the beginning."

It appears, in any case, that Mullen's testimony was not quite complete even in speaking of New Jersey wiretaps which, he said, contained "no reference" to Donovan or Schiavone Construction. In fact, Mullen, acknowledged during the interview, the FBI's summaries or indexes of the New Jersey surveillances, in line with standard procedure, list only the participants in a conversation and rarely mention "references" to others.

It was those indexes, not the tapes themselves, that the FBI consulted in making its report to the Senate committee. Donovan, Mullen said, could have been "referred to 50 times" on the New Jersey tapes and his name would not have been indexed unless some criminal conduct was ascribed to him and he was identified clearly.

The Masselli tapes, by contrast, represented a departure from standard procedure, Mullen acknowledged, in that the agent in charge of the case considered them so important that "everybody mentioned" and every company, eventually 24,000 references, were put on a computerized index.

As a result, Mullen said, "it seems to me that I did know" at the time of the confirmation hearings "there were other references" to other Schiavone officials and mentions of "a lot of business dealings between Schiavone and Masselli" on the Masselli tapes.

Mullen did not mention these at the hearings. He shrugged them off during the interview as unimportant because, as he understood it, they concerned only "business dealings, legitimate business dealings."

Now in prison as a result of other evidence obtained from the tapes, Masselli was head of Jopel Construction and Trucking Co., which, sources say, muscled its way into business as a subcontractor for Schiavone Construction on a New York City subway project in 1977.

Masselli took over the assets of another subcontractor, Louis Nargi, who reportedly had fallen into heavy debt to Masselli, and he subsequently built Jopel into a multimillion-dollar business. The takeover, sources say, set off recriminations that resulted in a Mafia "sitdown," but the dispute was resolved in Masselli's favor.

Mullen said he "could well have known" at the time of Donovan's confirmation proceedings of the reports that Masselli had muscled Nargi aside, since that was what a good part of the investigation targeted at Masselli "was all about," But he indicated that he still saw no reason to bring that up in the context of the Donovan inquiry.

As for the taped allusion to a possible social trip with Masselli, Mullen emphasized several times that there was only that "one time" reference.

"One time! One!" he said. "Hell . . . , you hold one trip against a guy? If you said he was frequently in their company or something, that's different. And he may not have even known he was referred to on there."

According to informed sources, there are in addition to the "Ray Donovan" reference, a number of other mentions of "Ray" on the Masselli tapes that turned up when special prosecutor Leon Silverman and his aides had them all transcribed this year.

The FBI also was told just before Donovan's first Senate hearing that a bureau imformer had alleged that Donovan was in a party arranged by Masselli that had gone to Miami for the 1979 Super Bowl. Mullen dismissed that, however, on the grounds that it had been "proven to be incorrect."

Masselli and his colleagues, he said, were under intensive investigation at the time of the 1979 game. "The people who went [to Miami with Masselli] were photographed [getting on and off the plane] and surveilled and the manifest was checked" Donovan's said, "wasn't in the photographs" and his name didn't show up on the manifest.

But when asked if the agents conducting the 1979 surveillance would have known Donovan if they had seen him, Mullen replied: "I doubt it."

A few days before its final hearing on the Donovan nomination, the Senate Labor Committee was told of allegations from imformers that Schaivone Construction was "mobbed up" through Masselli, but not of the extensive wiretaps that might have been checked.

At one point, Sen. Donald W. Riegle Jr., (D-Mich.) began asking about what kind of a record Masselli had. Mullen interrupted in mid-sentence and told the senator "I do not have any background whatsoever on him."

Mullen defended that response vigorously. "I didn't [have it] at the time," he said. "I just didn't have it . . . . It wasn't in my head. I don't know every organized crime figure in the country."

Still executive assistant FBI director as well as acting DEA administrator, Mullen said he decided on the interview to try to lay to rest mounting questions about his testimony and his role in the Donovan investigation.

He acknowledged that there were some relevant allegations in FBI memos and interviews that were buried in bureau files until recently, but Mullen said: "I testified honestly, forthrightly and to the best of my knowledge at the time."

"You learn to testify," he said. "I've always been of the opinion that [when] you go before a congressinal committee, you're positive, you don't hedge, [you don't] dance around answers. You just come on, and hit it hard and be up front. And that's what I thought I was doing."

Senator HATCH. By Mr. Lardner. This is entitled, "FBI Withheld Facts It Had on Donovan." It is by George Lardner, Jr., a Washington Post staff writer.

I am trying to direct you where I am going to read. It is the seventh paragraph. He says, "But Mullen said he had no regrets over the actions in the case and said he would withhold information about the wiretap again if he had to do it all over."

Is that a true characterization? Is that a true restatement of what you said on that tape recorder that day?

Mr. MULLEN. I would not have stated it that strongly, I do not believe, Senator Hatch, and believe me, I do have regrets about not having mentioned it if it could have avoided all of this.

Senator HATCH. Worded strongly or not, Mr. Mullen, would you have withheld the information about the wiretap again? I will tell you what is bothering me. If what you are saying is, I did not know about the New York Times articles. I did not know that they had been told. I did not know, really, what was going on here, and therefore, I was loathe to give this, for fear that I would be disclosing some things that would get, perhaps, informants or others in trouble—that is one thing. If that is what you were doing, if that is what you had in your mind at that time, maybe that could explain this. But if you did have that on your mind at this time, if you did know about the New York Times articles, and you did know that Masselli and his son had been notified, as required by law, and you did know that basically, these were serious allegations—Mr. Adamski characterized them as such—then, would you have withheld that information—and which is true?

Mr. **Mullen**. The former is accurate.

Senator **Hatch**. You feel the former is an accurate statement of what your mind was at that time?

Mr. **Mullen**. That is correct.

Senator **Hatch**. In other words, you really did not know because—now, let me add some more. What you are saying is, because you were one of the top supervisors at the FBI, and you had such a broad jurisdiction—how many cases did you say, 86,000 cases——

Mr. **Mullen**. Right.

Senator **Hatch** [continuing]. That you had to at least have some working knowledge about, or at least, some of them—and even though this one was pertinent and it was a case that you were testifying on, that basically, at the time, you withheld that information because you just, plain did not want to get into that wiretap for fear of giving up information that you really should not have told the committee outside of executive session.

Is that a fair state of your mind at that time?

Mr. **Mullen**. Fair, but had I focused on that, and seeing it as something that would be of serious concern to the committee—as I can see now that it is——

Senator **Hatch**. Well, it was serious.

Mr. **Mullen** [continuing]. Then, I would have mentioned it. So I can only say, Senator Hatch, it was a judgment call; it may not have been the right one.

Senator **Hatch**. Are you saying that you did not focus on it, and you just plain did not recall or remember it, that the serious allegations in there, you did not remember them enough to realize that it was serious at the time, although you do now. Is that what you are saying?

Mr. **Mullen**. Now, you are talking just about the Masselli overhear?

Senator **Hatch**. Yes.

Mr. **Mullen**. I did not focus on it at the time as being of serious concern because although there were business ties that were normal business ties, it did not at the time seem to add anything to the substantial information we had already furnished alleging business and social ties with organized crime.

Senator **Hatch**. Wait a minute. Did you know what was in that memorandum, because if you knew what was in there, those allegations to me are extremely serious.

Mr. **Mullen**. Which memorandum? I am sorry.

Senator **Hatch**. Talking about the Masselli tapes—it would be the Adamski memo of January 12, 1981.

Mr. **Mullen**. I believe the other information was furnished, was it not?

Senator **Hatch**. Well, it was not furnished before the 15th, when we were going to mark Mr. Donovan up, even though this was known on the 12th. Frankly, not all of the information was even furnished on the 27th, when you testified, including the pertinent Masselli tape materials.

Mr. **Mullen**. Now, I can only specifically refer to the Masselli overhear. That is the only one I am directly—the other material was summarized—and that was the accepted practice, as it had been for many years——

Senator HATCH. You are saying you did not know what was in this memorandum dated January 12, 1981.

Mr. MULLEN. I did see the memorandum, but I do not know what part of that was eventually conveyed to the committee and in what format. I believe some was conveyed during the testimony.

Senator HATCH. Well, very little of it was conveyed at that time. What I am saying, Mr. Mullen—and look, I just want to know the truth—what I am saying is this. I want to know what your state of mind was at the time you testified before our committee. Was it the fact that you just did not remember what was in this memorandum, or that you did not feel those allegations which I consider serious were serious enough to tell the committee about, or that you just deliberately decided not to tell the committee about those matters? Now, which of those three was it, or is it some other answer?

Mr. MULLEN. We are going back 2½ years, and I can say with some certainty now, I would not have recalled the specifics of that memorandum at the time of my testimony. The prepared testimony was based on many, many documents. I am told, for example, that three lines in one statement was the basis of 34 teletypes that had been submitted to headquarters. I certainly would not have recalled all of the information contained in those teletypes or in the many, many memorandums we would have seen at the time.

Senator HATCH. So what you are saying is, if I interpret correctly—and look, I believe people—I make plenty of mistakes—my gosh, they are pointed out all the time, by friends in the media and elsewhere, and my wife points them out. It is not a sin to make mistakes. If this is a mistake, that is one thing. If you deliberately withheld information that you knew was important, that you knew was serious, that you knew that the Labor and Human Resources Committee would have found important and serious and would have been relevant to the confirmation process of a Cabinet-level official, that is another matter.

Mr. MULLEN. I did not intentionally withhold that information which I considered important from the committee, and would not mislead the committee under any——

Senator HATCH. Now, what I am saying is—and let me get down to specifics—if you knew what was in this memorandum at the time that you testified—either you did or you did not. If you did not, maybe it was because you just were too busy and had too many things to do. But if you knew what was in there, and you decided that was not important to the committee, then I find that to be a pretty tough problem for you.

Mr. MULLEN. That was not the case, Senator Hatch.

Senator HATCH. What was the case? That is all I am asking. And keep in mind, I want to give you the benefit of the doubt. I have no desire to vote against you, but I will tell you something. This is important stuff. Go ahead.

Mr. MULLEN. I think I have already said I would not have recalled the specifics of everything that was in that memorandum. I just did not recall it.

Senator HATCH. At the time you testified?

Mr. MULLEN. At the time I testified, that is right.

Senator Hatch. In other words, to put it bluntly—and I am not trying to have a bad characterization in the media; I do not want that to happen to you—but to put it bluntly, you just, plain did not have these facts at your disposal at the time, and you assumed that they were not as bad as they turned out to be. Is that a fair characterization?

Mr. Mullen. I think the first part is accurate, with regard to I just did not have them at my disposal at the time; that is correct.

Senator Hatch. Well, you had them at your disposal, but you just, plain did not focus on them; is that what you are saying?

Mr. Mullen. Well, when your initial goes on a memorandum and goes into file. I may never have seen that again in my entire Bureau career had it not come up during this hearing. And so, unless I memorized it——

Senator Hatch. Well, you did in your deposition—not deposition, but on the record discussion—you did state that you discussed it with Adamski, these materials.

Mr. Mullen. With Adamski and many others, yes.

Senator Hatch. But at the time you testified—one of the problems is when you did testify last year, I asked this question. I said, "Now, have you personally seen that teletype?" and your answer was, "I have seen the teletype."

Mr. Mullen. I am sorry?

Senator Hatch. Did you personally see the teletype, which was a much longer description than even this memorandum, and you said you had seen it.

Mr. Mullen. Yes, but seeing it and then remembering everything in its entirety is a very different thing.

Senator Hatch. OK, now, let us get down to it. Personally, you are saying at the time you testified, you frankly made a mistake, that you had not remembered all of these matters in there, and had you remembered them, you would have either called for an executive session, had you thought about it, or you would have told us about it. Is that correct, or isn't it?

Mr. Mullen. Now, if not remembering is a mistake, then I made a mistake.

Senator Hatch. OK, you are saying you made a mistake there. I can accept that. Go ahead.

Mr. Mullen. If not remembering, or not having immediate recall of everything contained in the many memoranda and teletypes, then it was a mistake.

Senator Hatch. Let me just go a little bit further into this article. Let me read out of the report, because I want to get this as cleared up as I can, because there are colleagues who are very concerned about this, and I am one of them.

We state on page 22 of the Report of Special Counsel, listed as paragraph 12, and the citation on the top is, "Mr. Mullen also knew of the Masselli tape reference, but he did not tell the Committee before January the 15th," and the next paragraph reads, "Mr. Adamski wrote a memo to Mr. Mullen dated the same day as the Donovan hearing. It discussed the Masselli tape reference"—in other words, January 12, 1981—"It discussed the Masselli tape reference and related information. It characterized the Masselli tape reference as 'pertinent.' It said nothing, however, about the 'Big J' allegations." And I am going to get into that in just a second. "Mr. Mullen agreed with Mr. Adamski's assessment that the information in that memo was 'important,' 'could be characterized as serious,' and was 'pertinent' to the Donovan investigation, but he took no steps to advise the committee before its vote scheduled for January 15th."

Now, are you saying here that the reason that you did not is because you made a mistake of recollection at that particular time? And again, I can understand mistakes; I make plenty of them. Is that what you are saying?

Mr. MULLEN. Two points that I am not sure now—we are into the "Big J" allegations now——

Senator HATCH. Well, what I am trying to do is find out whether you deliberately withheld information that I think anybody in their right mind would say was crucial to that nomination process, or whether you did it because you made a mistake; you just did not recall because of the pressure of your business. Now, if it is the latter, I have to admit I do not have as much problem as I do with the former.

Mr. MULLEN. It was the latter. It has to be the latter, Senator Hatch, because I did not deliberately withhold anything in order to mislead you or the committee.

Senator HATCH. All right. All I am trying to do is get this clear, because it is not clear. Let me go a little bit further. In this article by Mr. Lardner, it goes on a little bit further—I cannot really tell you the paragraph, but I think you can find it if you look at it. Let me go to the prior paragraph—you are using the same thing I am—right at the bottom of the left column. "FBI officials here, however, made no effort to determine if the Donovan conversation was covered by the grand jury secrecy rule. Mullen said he discovered later that it was not, but he still defended the decision not to tell the Senate committee. FBI Director, William H. Webster, Mullen added, was not involved. 'I made that decision consciously,' he said, in one exchange with three reporters present. 'I did not want to open up that whole area, because in my judgment, that conversation was not pertinent.' "

Now, is what you are saying here today that that conversation was not pertinent, because basically, you could not recall all the details of the teletype or of this memorandum from Mr. Monroe?

Mr. MULLEN. I am not even sure I recall that at the time of my testimony. "Pertinent" probably is not a good word. It was not necessary to furnish it because it was redundant and repetitious of information we had already furnished.

Senator HATCH. The last question I want to ask you on that particular subject—were those last quotes in that article accurate quotes as to what you said to the reporters—to this particular reporter——

Mr. MULLEN. Which one, now?

Senator HATCH [continuing]. Who, I happen to feel, is a very accurate reporter.

Mr. MULLEN. I am sorry, Senator Hatch, which one are you referring to?

Senator HATCH. The one I just read. "I made that decision consciously," and then——

Mr. MULLEN. I think where we are having—and I want to be clear on this, because it has been a problem in the past—but the conscious decision was before the hearings. I did not sit during the hearings and say, "Should I tell them this or not tell them that." You know, you do ask questions quickly, and I tried to respond——

Senator HATCH. Well, you see, that is even worse, in my opinion, because if you made it before, that meant you had time to recollect, you had time to review the files, you had time to know what you were making the decision on; where, if you made a snap judgment because you just could not remember—you know, you had come to the conclusion that Mr. Donovan did not——

Mr. MULLEN. Oh, I see, and I am not certain I did remember it at the time. And I know we have quoted from this article some parts of it that do not put me in the most favorable light—the whole article does not—but I also say in there that I testified honestly, forthrightly, and to the best of my knowledge at the time, and I believe that I did, Senator Hatch.

Senator HATCH. I will be honest with you. One of the problems I have is it looks to me—and I think it would look to most reasonable observers of it—that when we asked you about wiretaps, you mentioned New Jersey, you omitted to mention New York. Unless you just did not recall, even though these are pretty detailed memoranda—and look, I have to admit, as frenetic as my life is, I do not recall everything I should recall all the time—unless you did not recall, it looks like you told us about the one, but yet, did not tell us about the other that was really important and pertinent, and I might add, very important to the committee and its deliberations at that particular time. Now, in the end, all of this seemed to be resolved in Mr. Donovan's favor, but at the time, that was very, very important.

Mr. MULLEN. Had we focused on it properly in view of what has transpired, and I can see now the confusion that could have been avoided, I would have asked for executive session. But Senator Hatch, I met with you privately before the Donovan hearings and in fact, conveyed the exact number of wiretaps in New Jersey at that time.

Senator HATCH. It looks to me like you zeroed on New Jersey without telling us about New York, and that that tends to lend credibility that you withheld information that you knew about, as that article seems to indicate.

Now, I might ask this question. Before withholding information like that, shouldn't you have found out if the targets themselves of the wiretaps were notified, and if there had been any articles on this?

Mr. MULLEN. We work in a very short timeframe, as you know, Senator Hatch, and——

Senator HATCH. Well, on that issue, I have to give you credit because it was short; you had pressure from me, you had pressure from Senator Kennedy, you had pressure from the White House, you had pressure from all sides. I mean, I understand that, and I am trying to give you the benefit of the doubt on those——

Mr. MULLEN. The thought never occured to me or to anyone else, to my knowledge, that we should go behind it and check those out. When the Special Prosecutor came up with this information, he had a much longer period of time. I think he had 6 months and 20 investigators and the entire resources of the FBI, as well as the grand jury, and turned up much of this information.

Senator HATCH. Well, one of the problems, of course, I have had with this whole thing is that if you look at the chronology, on the 5th of January, we got a little bit of information from the FBI, really, the most miniscule part of the whole case; on the 11th, you get this very pertinent information, and I think "pertinent" is a good word, and perhaps crucial information. On the 12th, we have the hearing, and all we go into on the 12th are matters that we knew about which did not include that very specific and pertinent information on the 11th. We schedule mark-up for the 15th, without having any of this information. And I will say this, one thing that redounds to your credit is that before the 15th, Picardo surfaced, and you immediately notified us about Picardo, and of course, that delayed the hearing date. Then, on the 23d, we got some more information, and then you testified on the 27th, but in essence, did not tell us all of the information that was then available.

In these memoranda or in these teletypes, over the period of the next year, year and a half, we had a continual finding of information that I do not think you knew, or those who testified knew about at that time, but which I suggest should have been known about in this particular situation, and it was just like a comedy of errors, with materials coming from the FBI over a long period of time. In fact, I can remember chatting—some of these materials, we picked up from the FBI—I guess the Director had not even known about some of them—and I remember chatting with the Director, and how embarrassed he was, not because he had done anything wrong—he had not; he was totally open with me throughout the process—but that this stuff kept surfacing from offices outside of Washington, offices in Washington, and other areas. Now, to the credit of the FBI, they gave us all of this material, over the dribble-out period of time that we had.

But you can see why that is very upsetting to members of my committee, to me, and to those who had to go through this process, because we could have resolved this whole process. Had Picardo not surfaced, had we not had a Special Prosecutor's investigation, we would have never heard about any of these things. As a matter of fact, we would not hear about the next thing I am going to go into, and that is the "Big J" allegations, and those are very important. We did not hear about that until after you gave your on-the-record discussions last summer.

Let me just go into that. Months after you testified, Mr. Mullen, in December 1982, we finally saw an FBI teletype dated January 11, 1981. This was addressed to the Director. It contained the following allegations and information—now, this is important (1) that the relationship between Labor Secretary designate, Raymond Donovan's firm and "Big J" Demolition should be "explored" because "one had to have" organized crime connections to deal with "Big J"—and I think you would say that is a pretty serious allegation, wouldn't you—rightly or wrongly, it is serious; (2) that Mr. Donovan had "definite ties" to organized crime as a result of Donovan's negotiations with labor unions; (3) that Mr. Donovan was "rumored to have" a dummy corporation to launder money; and (4) that Donovan's firm needed a multimillion-dollar sum of money badly and therefore had to get a loan from FIAT.

Now, as you know, the Labor Committee did not get any of this information contained in that teletype until almost 2 years later, long after the Senate had consented to the confirmation of Labor Secretary Donovan, and I am personally calling that information the "Big J" information.[1]

Now, let me direct your attention to a copy of the teletype. You have a copy of the teletype right in front of you, containing the "Big J" information. If you will look at that, can you tell us when you first saw that teletype?

Mr. MULLEN. I cannot say when I first saw it, Senator Hatch.

Senator HATCH. OK. Was it before January 27, 1981—are these your initials up on the top, right-hand corner—excuse me—the lower right-hand corner?

Mr. MULLEN. I really cannot tell if they are or not; I really cannot from this copy I have. I would be reluctant to say they were or they were not.

Senator HATCH. Well, let me help you.

Mr. MULLEN. I tend to think they are not.

Senator HATCH. Well, maybe we could clarify it this way. Is there any doubt in your mind that you saw this?

Mr. MULLEN. There is doubt in my mind that I saw it, but it is because such a long period, 2½ years, has passed.

Senator HATCH. Well, as I understand it, you testified to Mr. Metzenbaum that the information in that teletype was given to the Senate. Am I right on that?

Mr. MULLEN. Not referring to that teletype, but another one.

Senator HATCH. You were referring to another one?

Mr. MULLEN. Yes.

Senator HATCH. I had—and the only reason—I am not trying to embarrass you, Mr. Mullen, but I had that blown up and compared with two other known Mullen initials that you have admitted are yours. I would just like you to look at the blow-up and tell me if you believe that that is your initials, or could it be?

[The following illustration was received for the record:]

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[1] Can be found on page 342.

HANDWRITING EXEMPLARS AND UNKNOWN

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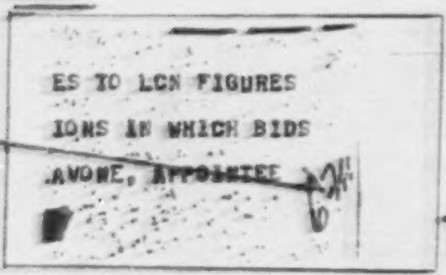

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January 11,1981 telex re Donovan having "definite ties"

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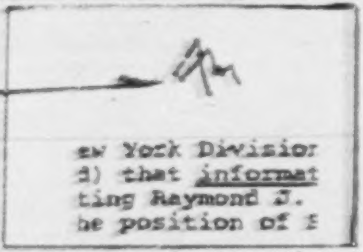

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Ex. 13 January 12,1981 memo from Monroe(by Adamski) to Mullen

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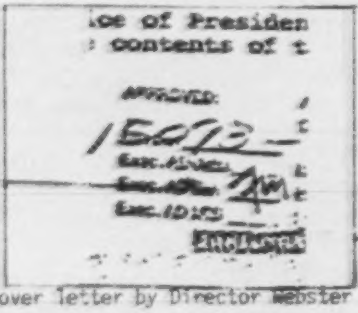

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Ex. 20 January 23,1981 cover letter by Director Webster to Chairman

Mr. MULLEN. If my initials are there, I have no qualms at all about saying so.

Senator HATCH. In other words—they may be your initials, is what you are saying?

Mr. MULLEN. They do not appear to be my initials. I would not initial behind the "six" like that normally, Senator. I do not believe they are my initials. That would be perhaps a clerical employee who handled the teletype.

I think the initials are quite different.

Senator HATCH. So you do not think they are yours.

Mr. MULLEN. I do not think they are.

Senator HATCH. OK.

Mr. MULLEN. But I cannot say whether I saw the teletype or not; I may have.

Senator HATCH. In other words, you may have seen the teletype——

Mr. MULLEN. Yes.

Senator HATCH. But if you did, then perhaps, this is another where, because of the press of your business, you were unable to give it to us.

Mr. MULLEN. Well, someone else handled the "Big J," or this teletype and summarized the information. I do understand there is some contention as to whether the summaries reported the information adequately enough, and that, I cannot answer for, but I——

Senator HATCH. Do you know who did handle it?

Mr. MULLEN. I would suspect Adamski, but I could not say for sure. But I do not believe those are my initials, Senator, the more I look at them.

Senator HATCH. OK, I accept that. Now, it is not your testimony here today that this information in this teletype was included in your report to the Senate, is it?

Mr. MULLEN. I am sorry?

Senator HATCH. You are not saying this information in this teletype was given to the Senate Committee on Labor and Human Resources, are you?

Mr. MULLEN. What I understand is the agent who prepared the summary thought he had, but there is some contention that it really did not report it well.

Senator HATCH. Well, it is an important contention, because I tell you, I did not know anything about it until long after your testimony last summer. You see, these are the things that bother——

Mr. MULLEN. In my testimony?

Senator HATCH. That is right.

Mr. MULLEN. That is perhaps when I first really became aware of it myself; I am not certain of that, though.

Senator HATCH. So you are saying that you may not have been aware of this at the time and may have become aware after your testimony this last year?

Mr. MULLEN. That is correct.

Senator HATCH. Let me just ask you this. If you think Mr. Adamski handled that—he was your subordinate at the time—are you saying that you may not have been briefed on this matter; you may or may not have, but you had forgotten about it?

Mr. MULLEN. May or may not have.

Senator HATCH. And you feel that you had forgotten about it, or you just, plain cannot recollect why you did not give it to us?

Mr. MULLEN. I cannot recall why this was not given at all. I just was not involved at that level.

Senator HATCH. Well, I will have to ask you this. You do agree that there is no reference to "Big J" or any of these allegations in any of the statements you gave, or in any reports that we received.

Mr. MULLEN. I do not recall mentioning it, Senator Hatch, in the original testimony. Now, this may have come up during my closed sessions with you, and we have had a lot of opportunity to review documents before that testimony.

Senator HATCH. Well, I have to agree. We did not know about it until well after you testified.

Mr. Mullen, just to kind of button it all up, are you saying to us here today that the problem here is not the deliberate withholding of crucial information to the committee that you definitely knew existed at the time you testified——

Mr. MULLEN. Not a deliberate withholding to mislead you; I would not do that.

Senator HATCH. You would not have done that to mislead us?

Mr. MULLEN. No. Had I focused on it properly, I perhaps would have handled it differently.

Senator HATCH. Well, let me say this to you. My whole lifetime has been built on giving people the benefit of the doubt, and I am trying to help people who basically are trying to do what is right.

I am really concerned about this nomination, because I personally feel that there are a lot of questions raised here that are very serious questions. I am happy for Secretary Donovan that he has come through this well, and in the end result, I think Secretary Donovan has come through this. Your record up to now, according to the Director, according to the Attorney General, according to everybody I chat with, is an exemplary record. What you have done with DEA since you have been there, they tell me, is just excellent. You do have some detractors, but they are not among the top leaders, to my knowledge, of the FBI and the Justice Department.

I have to confess I am extremely concerned about this whole problem. I also have to confess that I do not know what to do, because as chairman of the committee, I was deeply offended that we had to go through all that when we could have had all the information up front and early. Now, maybe an injustice would have been done had we had all that information; maybe we would have rejected Secretary Donovan, who has since then been exonerated or at least been found not guilty as charged by the special prosecutor.

So all I can say is that I am really perplexed about it. I do not know what to do other than to give you the benefit of the doubt. You have, on the one hand, so many good qualities. You have a good family—I can tell that. I can see how it is churning your family up to go through this as I sit here today. And I do not like that. I do not like to be part of churning up your family. I personally have always had a good relationship with you and personally think you are a good person. I personally believe you have done a good job as an FBI servant of the people, and I personally believe you have done a good job at DEA. But I also personally believe there are some real fault here that you have indicated here today, that if there are, they are not the faults of deliberately trying to mislead us or are not the faults of somebody who is deliberately usurping the authority of our committee. And what you are saying is that if they are faults, they are the faults of recollection, faults of mistakes that you made because of pressures of time. And I think a case can be made for that.

I also—and I need to say this publicly—I also think you are not the world's best witness. You are a fine man, but you are not the world's best witness. I think that—and that is not because of any great lacking on your part. A lot of us are not good witnesses. I remember when I was called to testify once in court, I was a pretty lousy witness myself, and I have been in and out of courts all my lifetime as an attorney. And I think most attorneys have had the same experience if they have had to testify. So I have to make some allowances for that.

My desire is not to harm your position or your future. And all I can say is this. I am going to give you the benefit of the doubt. It is not easy to do, because I know there are men on this committee who do not want to do that, and they have good reason, in my opinion, in their eyes, to not do so if they feel that way. I am going to give you the benefit of the doubt—and unless—and I am going to reread this, and if I feel that there is something that is wrong, I do not know that I will support you. But personally, as of right now, I am going to give you the benefit of the doubt, and I intend to support you at the markup. And I am going to just challenge you to be the best doggone Director of DEA, assuming we can get you through this committee, that ever existed. And I likewise, along with Senator Kennedy, the ranking minority member of that committee, I am going to challenge you that if you ever are asked to come before a Senate committee or a congressional committee again, you do your homework, you read those materials, and don't you withhold any information consciously or otherwise, or by mistake or otherwise, because this is serious business up here. I know you know that. I do not have to lecture to you. You have been through it.

But I frankly worry about this an awful lot. It has been an agonizing thing for me for well over 2 years now, and it has been no fun for me, and it has been no fun for you. But I look at your good family, I look at you, I look at your past record, I look at what you have done at DEA, and I just, plain want to give you the benefit of the doubt, and if I am going to be criticized for that, so be it. I would rather be on the side of giving you a chance to repent if there is need for repentance, a chance to make up for, perhaps, a mistaken recollection at the time, if that is the case, or a chance to just to do so in the future and do what is right. I believe you will. And I am relying rather heavily on the personal testimony in your favor of a whole variety of people, including the Director of the FBI and the Attorney General of the United States.

So with that, I will just flat out tell you that I personally have no difficulty with you as a human being, because I think you are a fine fellow, and I am going to support you unless something else crops up that causes me to think otherwise.

The CHAIRMAN. Thank you, Senator.

Mr. MULLEN. I want to say, Senator Hatch, if some of my actions, whether they be errors in judgment or mistakes, have offended you, I am sorry for that. And you can be sure I will be the best possible Administrator of DEA.

Senator HATCH. Well, thank you. I wish you the best, and I hope that this committee confirms you.

The CHAIRMAN. Mr. Mullen, I know Senator Hatch had some serious doubts and concerns about the way you answered some questions before the Labor Committee. I was very pleased to hear him say this afternoon that he is going to give you the benefit of the doubt and will support you. I personally think you are well-trained; I think you are an honest, capable public servant. I intend to support you because I have full faith in your integrity, and I think you are well qualified. And I am delighted that Senator Hatch says that he will give you the benefit of the doubt and support you, too, because his position here will mean a great deal to you on this committee; by virtue of being chairman of the Labor Committee, what he says concerning hearings there would carry great weight on this committee.

And, Senator Hatch, I just want to say, I find you a man of great consideration and compassion, and I was really not surprised that you did what you did. I really was not surprised, because I thought that if you had any doubts, that you would resolve them in his favor.

Senator HATCH. Thank you, Mr. Chairman. Personally, I am glad to do it.

The CHAIRMAN. And Mr. Mullen, we commend you that he has done that, and we think now that you will make a good Administrator.

I had a few more questions, but the 5-minute bell has already rung, and we have about 3 minutes to get there, so I am going to let you answer these for the record.

[Short recess was taken.]

The CHAIRMAN. I do not believe there are any other questions to be asked by anyone.

I wish you well. We will do what we can to get you confirmed, and if you are confirmed, I think you will make an excellent record in this position, and we will wish you success in your term of service.

Mr. MULLEN. Thank you, Mr. Chairman.

The CHAIRMAN. The committee now stands adjourned.

[Whereupon, at 5:05 p.m., the committee was adjourned.]

BIOGRAPHIES

HECTOR M. LAFFITTE

NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF PUERTO RICO

Birth: April 13, 1934, Ponce, P.R.
Legal residence: Puerto Roco.
Marital status: Married to Nydia Mercedes Laffitte Rossy, 5 children.
Education: 1955—Interamerican University, B.A. degree; 1958—University of Puerto Rico, LL.B. degree; 1960—Georgetown University, LL.M. degree.
Bar: 1959—Puerto Rico.

Experience: 1959-64—Hartzell, Fernandez & Novas; 1965-66—Private practice; 1966-69—Nachman, Feldstein, Laffitte & Smith; 1970 to present—Laffitte & Dominquez.

Francis M. Mullen, Jr.

NOMINEE, ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION, DEPARTMENT OF JUSTICE

Birth: December 14, 1934, New London, Conn.

Legal residence: Virginia.

Marital status: Married to Nancy B. Mullen, 3 children.

Education: 1957-59—Mitchell College, Associate of Arts; 1959-62—Central Connecticut State College, B.S. degree.

Military service: 1952-57—U.S. Air Force.

Experience: 1958-62—Police Department, New London, Conn.; 1962 to present—FBI: 1963-69—Los Angeles Office; 1969-72—Administrative Services Division, Washington, D.C.; 1972—Planning and Inspection Division, Washington, D.C.; 1973-75—Assistant Special Agent-in-Charge, Denver, Colo.; 1975—Planning and Inspection Division, Washington, D.C.; 1975-76—Special Agent-in-Charge, Tampa, Fla.; 1976-78—Special Agent-in-Charge, New Orleans, La.; 1978-79—Inspector Department Assistant Director, Organized Crime and White Collar Crime, Washington, D.C.; 1979-80—Assistant Director, Criminal Investigative Division; 1980 to present—Executive Assistant Director—Investigations; June 19, 1981 to present—Acting Administrator, Drug Enforcement Administration.

CONFIRMATION HEARING ON:

PASCO M. BOWMAN II, STEPHEN N. LIMBAUGH, PETER C. DORSEY, AND JOHN P. VUKASIN, JR.

THURSDAY, JUNE 22, 1983

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 2:33 p.m., in room SD-226, Dirksen Senate Office Building. Hon. Strom Thurmond (chairman of the committee) presiding.

Staff present: Duke Short, chief investigator.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. We have several confirmation hearings today. The first is U.S. circuit judge, Pasco M. Bowman II, of Missouri, to be U.S. circuit judge for the eighth circuit.

Is Senator Eagleton here?

[No response]

The CHAIRMAN. If not, we will pass on, because we have some Senators, and I would like to give them a chance to be heard first, since they are all so busy.

Next is U.S. district judge, Stephen N. Limbaugh, of Missouri, to be U.S. district judge for the Eastern and Western Districts of Missouri.

Senator Danforth and Senator Hecht.

Senator Hecht, you are here in behalf of this gentleman, aren't you?

Senator HECHT. Yes.

The CHAIRMAN. You are welcome to come around.

If the other judges come, we will give them a chance to say a word, but I do not want to hold up these Senators who are here.

Mr. Limbaugh, please hold up your hand and be sworn.

Do you solemnly swear that the testimony you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. LIMBAUGH. I do.

The CHAIRMAN. Senator Hecht, we would be glad to hear you.

STATEMENT OF HON. CHIC HECHT, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator HECHT. Mr. Chairman, it is a great privilege and honor for me to speak on behalf of my oldest friend, Stephen Limbaugh, who has been nominated for a Federal judgeship in Missouri.

The Limbaugh family and the Hecht family have been associated in Cape Girardeau, Mo., for nearly 70 years. My father moved to Cape Girardeau before the First World War, when he went into the Army. Steve's father, Rush Limbaugh, who had represented my father before, took full charge of his assets. Our families have been close since those early days. Steve and I entered the first grade together and graduated from Central High School together.

The Limbaugh family in southern Missouri has been known for their deep dedication to the practice of law and embody the highest principles of trust and honesty in their profession.

Approximately 6 weeks ago, my father, Louis, who is 94 years old, and Steve's father, Rush, who is 92, had a telephone conversation long-distance for nearly an hour. There was not a dry eye in Nevada or Cape Girardeau in the room where the conversation was heard. They recounted the pre-World War I years, the Great Depression, and the sacrifices that they both endured to educate their children. Their pride was evident by the tears in their eyes. All of us give thanks to the Almighty that both of our fathers are with us to share these honors.

I appreciate the opportunity to speak today and recommend that the Judiciary Committee approve the nomination of Stephen Limbaugh.

Mr. Chairman, if I might also ask Mr. Rush Limbaugh, the father of Stephen, who is in the audience, who is 92 years old, and is a practicing attorney, to also stand up and be recognized.

[Applause.]

Senator HECHT. Thank you, Mr. Chairman.

The CHAIRMAN. Senator, we are very pleased to have you with us, and I am sure that your laudatory remarks about this gentleman will be accepted by the committee full strength.

We will now be pleased to hear from Senator Danforth.

STATEMENT OF HON. JOHN C. DANFORTH, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator DANFORTH. Mr. Chairman, thank you very much. I want to apologize to you for being a little bit late.

Let me first describe the process by which Stephen Limbaugh was recommended by me to the President for nomination to the U.S. district court. We use in Missouri—at least, I use in Missouri—a merit system for selecting people to present to the President for the Federal judiciary, and that system consists of a committee, one member of which is appointed by law school deans, two members who are appointed by the Missouri Bar, and two members by me. They spend 2 months canvassing possible nominees, and in this case, with this particular vacancy on the eastern district bench, 17 applications were received, and the panel reviewed the records of those 17 applicants, interviewed the applicants, and made 3 selections which they then submitted to me. I then not only talked individually by phone to the members of the commission, but also spoke with a number of members of the bench and bar in our State of Missouri to get their input.

Stephen Limbaugh was not only one of the three recommended to me, but the verbal comments of the members of the commission and others with whom I spoke were uniformly glowing in their praise for Steve Limbaugh.

Mr. Limbaugh is 55 years old. He has been a resident of Cape Girardeau, I guess, for all of his life. I have had the privilege of knowing him for many years, although not as long as Senator Hecht has known him, because Senator Hecht was raised with Steve Limbaugh. He is a graduate of the University of Missouri and the University of Missouri Law School. He has practiced law since graduating from law school, and he has had particular emphasis on trial work. He has been extraordinarily active in bar affairs. He has served as a member of the board of governors of the Missouri Bar since 1975, and he is now the president of the Missouri Bar.

His activities, though, have not been limited to his profession, and he has been a real leader in his community. Among other things he has served as chairman of the United Way, county chairman of the American Red Cross, chairman of the Public Library Board, chairman of the County Cancer Society, and president of the Community Concert Association, and president of the Civic Center in Cape Girardeau.

Mr. Chairman, I can say from my personal knowledge that Stephen Limbaugh has all of the attributes to be a really splendid U.S. district court judge. He has the ability, he has the experience, and he also has the temperament. He is a very good person. He is a man with the right temperament, I think, to be a U.S. district judge. Therefore, I am honored to present him to this committee.

The **Chairman**. Mr. Limbaugh, I want to congratulate you on having these outstanding Senators here come and speak about you so highly. Senator Danforth has been here now for about 8 years—he was just reelected, I believe—and Senator Hecht is a new man, but he is held in high esteem, and I am sure the recommendations of these gentlemen will be of great benefit to you.

Now, we will ask you to step aside, while we take others who have Senators here, so we will not delay them.

Thank you very much.

Senator Weicker and Senator Dodd for Mr. Dorsey will now come around.

Senator Weicker, we will be glad to hear from you.

STATEMENT OF HON. LOWELL P. WEICKER, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator **Weicker**. Thank you very much, Mr. Chairman.

I am delighted to introduce Peter Dorsey to you and your committee, to fill a vacancy on the U.S. district court of the State of Connecticut. This is for me a moment of great pride; and it is also a very nostalgic moment. Back in 1949, this gentleman on my left sat in the No. 3 seat in the shell, and I sat in the No. 4 seat, as we rowed for Yale University. I had to listen to his constant chatter, not all of which was particularly complimentary, about my rowing style. Over the years I have listened to other people chatter too; but here we are now, with a parting of the road, in the sense that Peter will be going to the bench.

The statistics are all there in place—a graduate of Yale in 1953, as am I; a graduate in 1959 of Harvard Law School; a U.S. attorney for the State of Connecticut from 1974 to 1977; president of the Connecticut Bar Association. He truly is qualified in terms of all the professional standards, but what makes him totally qualified, in my opinion, is that he is just one superior human being. There is nobody I know of who has greater warmth, greater compassion, or greater understanding of the world around him than Peter Dorsey.

So I hope that this nomination will receive the approval of your committee. I know that the cause of justice, both within the State of Connecticut and wherever he sits will be well served by Peter Dorsey.

Mr. Chairman, in concluding my remarks, I would like to introduce Mr. Dorsey's wife, Connie, and his daughter, Jenny, who are both here with him today.

The **Chairman**. We would be very glad for them to stand, if they wish to, and any friends who are here. [Applause.]

Thank you very much, Senator.

Senator **Weicker**. Thank you, Mr. Chairman.

The **Chairman**. Mr. Dorsey, you have been recommended by one of the biggest men in the Senate—in more than one way. [Laughter.]

Senator Weicker is an experienced Senator here. He is one of the senior Senators, and both of these gentlemen are held in high esteem, and I am sure their recommendations will help you a great deal.

We will now be pleased to hear from the junior Senator.

STATEMENT OF HON. CHRISTOPHER J. DODD, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator **Dodd**. Thank you very much, Mr. Chairman.

I am joining with my colleague from Connecticut in recommending Pete Dorsey to this committee for approval as a district court judge. I do so for two reasons, Mr. Chairman. First of all, as Lowell Weicker has pointed out, Pete Dorsey brings to this nomination broad experience and depth of legal knowledge, which are absolutely essential for qualified performance on the bench. As a defense attorney, as a prosecutor, as a U.S. attorney, as President of our State Bar Association, he has touched virtually every base, from the standpoint of someone understanding the problems faced by a judiciary confronted by more and more complex issues that come before them and he is greatly experienced in civil and criminal practice as well.

So I feel entirely comfortable that from a substantive standpoint, this nomination deserves the support of this committee.

The second reason is that Mr. Dorsey has a political record as well. He has been very active in Connecticut politics, though unfortunately, Mr. Chairman, he has chosen the wrong party. And there is a strong possibility that if you do not approve him for this spot, I might face a challenge in 1986, and I want him to be a judge, for that reason. [Laughter.]

Seriously, he is highly qualified. I do not have as longstanding a relationship, obviously, as Lowell does, with Peter Dorsey, but he is highly respected and well regarded by virtually everyone in Connecticut who has had the privilege of contact with him, professionally and personally. This is a nomination which enjoys the support of Democrats and Republicans, because of his qualities as a human being, and I am delighted to join my colleague from Connecticut today in recommending him.

Thank you.

The CHAIRMAN. Mr. Dorsey, I congratulate you upon getting the Republicans and the Democrats to endorse you.

Thank you very much, Senator. We are glad to have you with us, and I am sure the committee will give great weight to these able Senators, and we will have your testimony in a few moments, Mr. Dorsey.

Thank you, gentlemen.

Next, Senator Wilson of California, with Mr. Vukasin, Judge Vukasin.

If you will stand up and be sworn. Do you solemnly swear that the testimony you shall give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. VUKASIN. I do.

The CHAIRMAN. Senator Wilson, we will be glad to hear from you.

STATEMENT OF HON. PETE WILSON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA.

Senator WILSON. Thank you very much, Mr. Chairman.

Mr. Chairman, I have the honor today to introduce to the Chair and to the committee Judge John P. Vukasin, Jr. Judge Vukasin is a native of California. His family has deep roots in Alameda County. He is someone who has been well-prepared for the experience of becoming a U.S. district judge for the Northern District of California by his prior service. It is a service of which he can be proud, after a distinguished private practice of some 10 years in the San Francisco Bay area, specializing in business practice, and following service as a trial attorney to the division of highways of the State of California.

Judge Vukasin was appointed by then Gov. Ronald Reagan to serve as a member of the California Public Utilities Commission. He served as commissioner and as president of the commission for the period of 1969 through 1974. He was, I think, a very courageous and dedicated commissioner. Clearly, then Governor Reagan thought so, because at the conclusion of that service, then Governor Reagan appointed Judge Vukasin to the Superior Court for the County of Alameda—that was in 1974. He was reelected in 1976, and reelected again in 1982, unopposed. President Reagan's pleasure with the service he received from first commissioner, then President Vukasin, and now Judge Vukasin, has occasioned this nomination today.

I might say that the President's confidence in Judge Vukasin is echoed by those who have observed his judicial performance. In December 1981, the Alameda and Contra Costa County Trial Lawyers' Association voted him Judge of the Year. He has won a reputation as being particularly effective in bringing about settlements—an art of no small importance, I know the Chair will agree.

Beyond that, I think the reputation that he enjoys for the highest character and for public service is well-known in his home county, and I can say that I have known Judge Vukason for many, many years. His family is the owner of a family business. His brother, George, recently, in the same tradition of public service, has been promoted to brigadier general in the U.S. Army Reserve.

I think this is an appointment of which the President can be very proud, and I think that it is one that will bring credit to his administration and greatly enhance the administration of justice for the Northern District of California.

With that, Mr. Chairman, I thank the Chair for your courtesy. I would be happy to answer any questions.

The CHAIRMAN. Judge, I congratulate you upon being so highly recommended by Senator Wilson, who is a new Senator, but one who holds the esteem and affection of the entire Senate. We appreciate his coming here, and Senator, you are welcome to stay, or you may retire, as you wish. We know how busy you are.

Senator WILSON. Mr. Chairman, you know in particular, since I am heading back to the other committee upon which we serve together. With your kind permission and Judge Vukasin's, I will excuse myself and go to the Armed Services Committee markup.

The CHAIRMAN. The first we have on our list today is Pasco M. Bowman.

Is Senator Eagleton here?

[No response.]

The CHAIRMAN. Come around, Mr. Bowman.

Please hold up your hand and be sworn. Do you solemnly swear that the testimony you shall give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God.

Mr. BOWMAN. I do.

TESTIMONY OF PASCO M. BOWMAN II, NOMINEE, U.S. CIRCUIT JUDGE, EIGHTH CIRCUIT COURT OF APPEALS

The CHAIRMAN. Would you like to introduce any of your family or friends who are here?

Mr. BOWMAN. I would be very pleased to introduce my wife, Ruth, who is here with me today.

The CHAIRMAN. Mr. Bowman, I believe you are dean and professor of law at the Wake Forest University School of Law, as well as the University of Missouri Law School in Kansas City—at least, you have served in those capacities.

Mr. BOWMAN. Yes.

The CHAIRMAN. Do you see any difficulty in the transition from that of professor of law to that of circuit court judge?

Mr. BOWMAN. No, sir, I do not anticipate any difficulties in that regard. I believe that work as a law professor and as a law school dean is good preparation for an appellate judgeship. As a law professor and a law school dean, you read and analyze a lot of cases. You do a lot of thinking about the law, both its substance and its procedure. You are involved almost on a daily basis in working with your faculty colleagues in reaching collegial decisions.

The **Chairman**. I believe you are in the Army Reserve now, aren't you?

Mr. **Bowman**. Yes, sir, that is correct.

The **Chairman**. You entered in 1959, and you are still in the Reserve. What is your rank now?

Mr. **Bowman**. I presently hold the rank of colonel.

The **Chairman**. Full colonel?

Mr. **Bowman**. Yes, sir.

The **Chairman**. Dean Bowman, the most recent annual report of the Director of the Administrative Office of the U.S. Courts indicates that the workload of the 12 U.S. courts of appeals continues to rise. Approximately 28,000 new appeals were filed in 1982. This represents a 60-percent increase over the previous record level of 1981, and a 68-percent increase above the number of appeals filed for 1975.

Also the first year that filings exceeded the level of 600 per panel was 1982. Do you have any recommendation as to how the number of cases on appeal can be reduced?

Mr. **Bowman**. That is a difficult problem. Part of the answer lies with Congress. To the extent that courts have discretion to take cases or not to take cases, they ought to exercise that discretion very carefully. I also believe that in interpreting the Constitution and in interpreting statutes, judges ought to avoid expansive interpretations that tend to create new causes of action and thus, more litigation.

The **Chairman**. I am interested in seeing judges placed on the bench who will interpret the law and not try to make the law. We have three branches of Government, and the Congress is supposed to make the law. Judicial activism is something, I think, of great importance. I just wonder how you feel on that subject.

Mr. **Bowman**. I believe my philosophy is very much the same as yours on that score. I do not think that judges ought to act as though they are legislators. I suppose it is always true that in interpreting a statute, in applying case law when you are dealing in a gray area and you are deciding the case as a judge, you make some law. But you ought to do so with great care. And a Federal judge, particularly, should bear in mind that he is appointed for life; he is not really answerable to anyone, and that in a democratic society, the lawmaking function belongs to Congress and not to the judiciary.

The **Chairman**. Dean Bowman, what is the proper application of stare decisis in constitutional law; specifically, what is the duty of a Federal judge when confronted with a case in which one of the precedents of his court clearly conflicts with the Constitution as that judge interprets it?

Mr. **Bowman**. If it is a case decided by my own circuit, and I was sitting on a panel in which we were hearing a similar case and being asked to apply the precedent from our own circuit, and if I felt the prior circuit decision was erroneous, I would seek to persuade my colleagues to change it. On the other hand, if we are dealing with a case decided by the Supreme Court, then our duty as lower Federal court judges is to apply the law as laid down by the Supreme Court, and we would have no other choice, no matter what our personal view of that point of law might be.

The CHAIRMAN. Thank you very much. I hope you have a successful tenure on the bench, and you are now excused.

Mr. BOWMAN. Thank you very much, Senator Thurmond.

The CHAIRMAN. We will now take Mr. Stephen Limbaugh. I have already sworn you, so if you will just come around.

TESTIMONY OF STEPHEN N. LIMBAUGH, NOMINEE, U.S. DISTRICT JUDGE, EASTERN AND WESTERN DISTRICTS OF MISSOURI

The CHAIRMAN. Mr. Limbaugh, I believe your father was introduced. Are there any other members of your family you would like to introduce?

Mr. LIMBAUGH. No, sir, there is not. I have a friend, a former Missourian, Mr. William H. Leedy, who is now a practicing attorney in Washington, D.C., and I would like to introduce him.

The CHAIRMAN. All right. We are glad to have him with us.

Mr. LIMBAUGH. Thank you, sir.

The CHAIRMAN. Mr. Limbaugh, would you tell the committee how you would handle an instance in which counsel for one of the parties in your court was obviously not a skilled litigator, and was not prepared to adequately represent the interest of his or her client?

Mr. LIMBAUGH. Senator, assuming the case had started, and, if the criminal case, the defendant was in jeopardy, I think that some care should be taken to assist counsel in every way possible to best represent a client. I have seen members of the judiciary very frequently do this in open court. I think that is a mistake, particularly when there is a jury; counsel should be called up to the bench, or there should be a recess and counsel taken to the court's chambers where perhaps some assistance can be given.

The CHAIRMAN. Mr. Limbaugh, how would you resolve a conflict between your own conscience or your own sense of justice and the clear meaning of a statutory or constitutional provision?

Mr. LIMBAUGH. Yes. I would be required to follow the clear precedent. As was remarked in the questioning of the last applicant, I believe in the principle of stare decisis. The difficulty is where there is no principle, but every effort should be made to find precedents upon which sound decision can be made, and if there is law, it should be followed.

The CHAIRMAN. Now, if that precedent were against your conscience, though, and you felt it was against the Constitution, I presume you would take another course?

Mr. LIMBAUGH. It would be difficult, Senator, but I believe I would still have to follow the case law.

The CHAIRMAN. Mr. Limbaugh, with your background and experience as a prosecuting attorney and a city attorney, do you believe it would be helpful to you as a Federal district court judge to have a sentencing commission to establish uniformity in sentencing?

Mr. LIMBAUGH. Senator, I think that could be very helpful. Obviously, the public is rightly concerned today about laxity in court sentencing. That is unfortunate. I would not share that position because of my philosophical point of view. I think there should be toughness in dealing with people obviously guilty of violating the law.

The CHAIRMAN. Mr. Limbaugh, I want to ask you the same question that I have asked some of the other appointees. How do you feel about judicial activism? I have seen some judges that have taken over the control of school districts and various institutions within a State, and I have always felt that we had three branches of government. Congress makes the law, and the judiciary interprets the law—separation of powers. And we have a division of powers between the Federal level and the State level. It has been my judgment that judges make a mistake when they attempt to usurp the rights of another branch of Government or to usurp the powers of a State government. I would like your opinion on that.

Mr. LIMBAUGH. Yes. I agree with you, Senator. I think there is too much of an excursion by the judiciary into the legislative branch of Government. If the Nation is to be truly successful and our system is to endure, there does have to be a clear separation of powers.

The CHAIRMAN. Those are all the questions I have, and I hope you have a happy tenure of service on the bench.

Mr. LIMBAUGH. Thank you very much, Senator.

The CHAIRMAN. Mr. Dorsey, would you come around and be sworn. Do you solemnly swear that the testimony you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. DORSEY. I do.

The CHAIRMAN. Please have a seat.

TESTIMONY OF PETER C. DORSEY, NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF CONNECTICUT

The CHAIRMAN. You have introduced your family already. Do you have any friends here you would like to introduce?

Mr. DORSEY. Yes, there is an old friend of mine that I grew up with many, many years ago—Mrs. Nancy Frost is here with my daughter and my wife, and I would like to introduce her to the committee.

The CHAIRMAN. We are happy to have them here.

Mr. Dorsey, you have been a practicing attorney, I believe, since 1959.

Mr. DORSEY. Yes, sir.

The CHAIRMAN. You also served approximately 3 years as a U.S. attorney for the District of Connecticut, and now you have been nominated for the position of U.S. district court judge.

What do you feel will be the most rewarding aspect of serving in the capacity of a district judge?

Mr. DORSEY. From the time that you first become involved in the legal process in law school, the whole concept of professionalism as a lawyer in making the society function has always been something that has grown as I have practiced law, and I regard the Judiciary as the epitomy of that kind of service to the community, because it is the law that keeps us together, and I hope that the functioning as a judge would permit me to make a further contribution to the community in which I live in that regard.

The CHAIRMAN. Mr. Dorsey, I consider judicial temperament to be a prerequisite for a good Federal judge. Would you give us your thoughts on this? The reason I ask that is that I have witnessed some Federal judges in the courtroom embarrass attorneys, jurors, witnesses, and others, when I felt it was completely out of order for them to do so.

Mr. DORSEY. There is no question but that that has been true in many instances, Senator, and I think the whole concept of what the judge does is remarkably enhanced by the kind of temperament that impresses the people who come before the judge, both litigants and their attorneys and the public at large, if the judge handles things in a fair, independent, and objective fashion. The kind of conduct that you have referred to detracts from the esteem and fairness with which the opinions and the judgments of the courts are rendered and undermine the whole system, and they should be avoided at all costs.

The CHAIRMAN. Mr. Dorsey, do you believe it would be helpful to you as a U.S. district court judge to have a sentencing commission to establish uniformity somewhat in sentencing? We have had a study made of that, and we have a sentencing bill up which contains a provision to have a commission, and if a judge should go below a certain sentence, or beyond a certain sentence, he would have to explain it, and also, it provides for the Government to appeal, as well as the defendant.

I just wonder how you feel about that.

Mr. DORSEY. Not knowing the exact form in which the bill might ultimately be adopted, I am not really precisely sure what I would see in it at that time. However, the whole concept of fairness in sentencing is extremely crucial for the credibility of the system. The disparity between sentences of comparable people for like crimes is something that markedly undermines the confidence that people have in the fairness of the system, and any educational tool, any means by which like cases can be handled comparably in order to avoid the idiosyncracies or attitudes of a particular judge in a particular sentencing situation would be extremely helpful, and one of the systems and methods that has been suggested, of course, is the thing that I gather is in the form of a bill that you have presented, and it could very well be very helpful in that respect.

The CHAIRMAN. You heard the question I asked about judicial activism. How do you feel about that?

Mr. DORSEY. The whole function of the judiciary is not only to interpret the law, but to apply the law. It is not to make the law; it is not to decide how the law should be administered. Those are, as you have quite appropriately commented earlier, the functions of the legislative and the executive branches of Government. Not only is the judiciary unfettered with the authority to administer the law, but it does not have the logistical capacity to do so. So, not only should the court be explicitly meticulous about restraining its natural instincts, its personal philosophy, in making law, but should simply apply the law as the Congress or the legislative body has adopted it, or as is found in the Constitution, and not try to usurp the other functions. It just cannot be done, and frankly, in good government, is just totally inappropriate.

The CHAIRMAN. Do not forget that statement after you become a judge.

Mr. DORSEY. I will try not to.

The CHAIRMAN. We are glad to have you with us, and we wish you well on the bench. You are now excused.

Mr. DORSEY. Thank you very much, Senator. I appreciate it, and I particularly appreciate the courtesy of Mr. Short and your staff, who have been very helpful in bringing my appearance before you.

Thank you very much.

The CHAIRMAN. Next, we have Mr. John P. Vukasin, of California, to be U.S. district judge for the Northern District of California.

You have been sworn. Do you have anybody here to introduce, family or friends?

Mr. VUKASIN. No, sir.

TESTIMONY OF JOHN P. VUKASIN, NOMINEE, U.S. DISTRICT JUDGE, NORTHERN DISTRICT OF CALIFORNIA

The CHAIRMAN. Judge, you have served nearly 9 years on the Superior Court of Alameda County, Calif., I believe.

Mr. VUKASIN. Yes, sir.

The CHAIRMAN. This is a State trial court of general jurisdiction.

Mr. VUKASIN. Yes, it is.

The CHAIRMAN. You served in the criminal department for 4½ years, but since 1979, have heard primarily civil cases; is that correct?

Mr. VUKASIN. That is correct, Mr. Chairman.

The CHAIRMAN. Prior to becoming a judge, I believe you served 5 years as a member of the California Public Utilities Commission, including 2 years as chairman.

Mr. VUKASIN. That is right.

The CHAIRMAN. Judge, the committee has received numerous letters of recommendation indicating that you are doing a fine job on the bench, and you are to be congratulated for your dedication and hard work.

Mr. VUKASIN. Thank you very much, Mr. Chairman.

The CHAIRMAN. Now, Judge Vukasin, as you are aware, Senator Cranston, the distinguished Senator from California, has advised the committee of his objection to your nomination. Senator Cranston's objection is based on a number of allegations that were brought to his attention, and he appropriately advised this committee of his concern. I would like to note for the record that I have fully explored the allegations raised by the distinguished Senator from California, and although I am personally satisfied with the answers I have received, I feel it only appropriate that these issues be discussed during this hearing and that you be given the opportunity to respond for the record.

Judge, I will address the allegations basically in the order they were presented to the committee by Senator Cranston. Now, first, it has been alleged that you were nominated for the position of district court judge for the Northern District of California in 1972 by President Nixon, and that after investigation by the Senate Judiciary Committee, confirmation was withheld, and President Nixon withdrew your nomination.

Judge, have you ever been nominated for a U.S. district judgeship, either in 1972 or at any time prior to the nomination we are considering today?

Mr. VUKASIN. No, Mr. Chairman, I was never so nominated.

The CHAIRMAN. I believe Senator Cranston raised that point from information that came to him, as I understand. Now, I want the record to reflect that I had the Senate Judiciary Committee file searched, and there is no indication whatsoever that Judge Vukasin was ever nominated for a district court judgeship prior to the present nomination, which confirms, I believe, the statement you made to me.

Mr. VUKASIN. Thank you.

The CHAIRMAN. Judge, you were nominated in March of 1974 to be an associate justice of the California Court of Appeals. Was the nomination later withdrawn by then Governor Reagan?

Mr. VUKASIN. Yes, sir, if I may explain.

The CHAIRMAN. You may explain.

Mr. VUKASIN. In early 1974, Governor Reagan asked me if I would be interested in serving on the California Court of Appeals. I indicated that I would be. He submitted my name in nomination for that position. Pursuant to law, the nomination was forwarded to the Judicial Qualifications Commission of the State for confirmation, and I think it was by custom forwarded to the State bar of the California Board of Governors for their evaluation. The State bar conducted their evaluation program—I am not familiar with the nature and extent of it—and reported—they recommended not confirming my nomination on the grounds that I lacked trial judge experience, and they specifically indicated that service on the public utilities commission, even though a quasi-judicial agency, was not adequate substitute for trial judge experience, and lacking having been a trial judge, they did not feel that I had sufficiently extensive trial attorney experience to justify for that lack of experience.

Several months went by, and the Commission on Judicial Qualifications took no action, and it appeared that they might not take action, and Governor Reagan would have been deprived of an opportunity to appoint someone to that position, because his term was expiring at the end of the year. I called him and suggested that he withdraw my name from nomination so that he could submit another name. He indicated to me that he regretfully and reluctantly decided that he would do just that, and he did. He subsequently appointed a sitting superior court judge to that position; the judge was confirmed, and he serves to this date.

The CHAIRMAN. So what you are saying, as I understand you, is that he withdrew the nomination at your request.

Mr. VUKASIN. That is correct.

The CHAIRMAN. Judge, it has been alleged that while serving with the California Public Utilities Corporation, you rendered 100 percent of your decisions in favor of utility or corporate interests. All decisions reached were against consumers.

Would you first comment on the validity of this allegation, and second, do you consider yourself biased toward utility or corporate interests?

Mr. VUKASIN. In answer to the charge that all of my votes on the commission were 100 percent in favor of utilities and against consumers, I have to respond by saying that that accusation is 100 percent wrong.

I had, sometime back, an occasion to review my decisions, and in—I do not recall exactly the precise number of cases—but somewhere close to 100 instances, I opposed rate increases in excess of $600 million. I do not remember the precise amount, but it was in excess of $600 million.

The CHAIRMAN. Do not drop your voice, now, because we all want to hear you.

Mr. SHORT. Pull the microphone just a bit closer.

The CHAIRMAN. Pull the microphone close to you and speak louder.

Mr. VUKASIN. That means that I either joined with the majority in denying a rate application, or else I dissented—and this was the usual case—from the majority who were granting a rate application, and I indicated the application should not be granted. So, to say that I voted 100 percent with the utilities is not an accurate statement.

Am I biased in favor of utilities? Senator, my attitude and my philosophy when I was a commissioner on the PUC was that by law—and these are the legal words—the commission is charged with assuring the citizens of the State with adequate service, investors with a reasonable return on their investment, and the ratepayers with no more than fair rates. We interpreted "adequate service" as being the highest level of service that can reasonably be demanded and expected of the utilities, and that service cannot be provided unless the companies were sufficiently fiscally sound so that they could attract the capital necessary to maintain the high level of service, and the rates should be no higher than is necessary, and that ratepayers should be charged no more than is necessary to maintain the fiscal soundness of the companies.

Now, rather than being in favor of the utilities and opposed to consumers, I would submit that that philosophy is in the long-range and long-term benefit to the consumers, and it is much better than reducing the rates now and creating problems for the future.

The CHAIRMAN. Thank you.

Judge, concerns have been raised about your ability to be fair toward particular groups, especially women, minorities, and criminal defendants. How do you respond to this concern?

Mr. VUKASIN. As to women and minorities, Senator, I reject the accusation out-of-hand, for two reasons. No. 1, it is not true, and I do not feel that way, and I resent the charge. Second, I have heard of no such accusations about me. And I have a number of friends in the legal community where I sit as a judge. And no friend of mine has ever come to me and said that there is a reputation in the community that I have been treating either women or minorities in an unfair fashion or displayed a prejudice against them. And I am sure if that was a widespread rumor, if there was validity or merit to such a charge, that I would have heard it.

As to the criminal defendants, this is a philosophy that I have often voiced, and it is nothing new. My attitude is that someone charged with a crime under our law is innocent until proven guilty. He is entitled a fair trial, and it is the trial judge's responsibility to do everything he can to assure that fair trial. If the accused is found to be innocent by 12 jurors out of 12, he is entitled to stand up from the counsel table and walk out the backdoor of the courtroom, a free man. If, on the other hand, a criminally-accused is found to be guilty by 12 jurors out of 12 jurors, then I think it is the responsibility of the judge to take into consideration the interests of the community as well as the individual when it comes time for imposing sentence.

The CHAIRMAN. In fairness to you, I would like to note that I have received a number of letters from individuals addressing this issue, and I will quote in part from several of them.

The Honorable Harold Perry, Oakland, Calif., states:

> It has been brought to my attention that a claim has been made that Judge Vukasin has made or expressed some negative attitudes relating to civil rights matters while serving as a judge in the Alameda County Superior Court. I am a black attorney, and in my dealings with Judge Vukasin, in all instances, he has demonstrated great patience and respect to all views expressed by opposing counsel and me. I disagree with the suggestion that Judge Vukasin has a questionable record on civil rights matters because, as a superior court judge, he would not be involved with such matters. The claim, therefore, would be groundless. In point of fact, most of the important civil rights matters are handled in other agencies, not the superior court.

Another letter from the Honorable Thomas J. Broom, states:

> I am a black attorney who has practiced in the County of Alameda where Judge Vukasin is seated. Not only have I practiced continually in this county, but I was a court officer in juvenile court where Judge Vukasin began his judicial assignment. During the course of his tenure, I have made many appearances before Judge Vukasin, and we certainly have had many disagreements over issues in various cases. It has come to my attention that it has been suggested that Judge Vukasin is a racist. This is absolutely absurd. I observed nothing during the lengthy period of time that I sat in his courtroom and he administered justice and the law to predominantly black kids, to even vaguely suggest that Judge Vukasin is a racist. I would ask that the person who made such suggestions be closely scrutinized as to his or her possible motives, as it is personally offensive to me when people use blacks and their plight as a basis for their objections to other people and on issues, unless there is some basis in fact.

Another letter, from the Honorable Carol A. Corrigan, Alameda County District Attorney's Office, states:

> It has come to my attention that others have accused Judge Vukasin of being impolite to women attorneys who have appeared before him. Such an accusation cannot be further from the truth. * * * I have appeared before Judge Vukasin many times. I and many others have found him to be consistently courteous and fair to all who appear before him. His evenhanded approach to the resolution or adjudication of cases makes his a very pleasant court in which to practice. His decisions are based not on the race or gender of the parties, or their attitudes, but on the dictates of fact and law.

I have another letter from the Honorable Nancy L. Hindle, San Francisco, Calif., in which she states:

> In December 1982, I appeared at a mandatory settlement conference before the Honorable Judge Vukasin, Jr., in Haywood, Calif., in the matter of *Jackson* v. *Harrison*. Judge Vukasin treated all the attorneys present, including myself, fairly and equally. I did not observe any difference between the manner in which he conducted himself toward me, the only female attorney present, and the manner in which he conducted himself toward the other attorneys present. During the time that I appeared before Judge Vukasin, his conduct in general and toward me in particular met the high standard of judicial performance that I have come to expect from the judges in the area.

Without objection, I will offer these letters to be included in the record in their entirety.

[The following were received for the record:]

GREEN, POPPETT & HINDLE
ATTORNEYS AT LAW
111 PINE STREET, SUITE 717
SAN FRANCISCO, CALIFORNIA 94111

MAR 12 1983

March 8, 1983

Senator Strom Thurmond
Chairman of the Senate Judiciary Committee
Russell Senate Office
Washington, D.C. 20150

Re: John Vukasin, Jr.

Dear Senator Thurmond:

I am an attorney practicing in the Bay Area. In December, 1982, I appeared at a mandatory settlement conference before the Honorable John Vukasin, Jr. in Hayward, California in the matter of Jackson vs. Harrison. Judge Vukasin treated all of the attorneys present, including myself, fairly and equally. I did not observe any difference between the manner in which he conducted himself towards me, the only female attorney present, and the manner in which he conducted himself towards the other attorneys present. During the time that I appeared before Judge Vukasin, his conduct in general, and towards me in particular, met the high standard of judicial performance that I have come to expect from the judges in the area.

Thank you for your attention to this matter.

Very truly yours,

NANCY L. HINDLE

NLH:glw

Harold L. Perry
A LAW CORPORATION
5227 EAST 14th STREET
OAKLAND, CALIFORNIA 94601

Harold L. Perry

(415) 533-0973

March 8, 1983

Honorable Strom Thurmond
Chairman Senate Judiciary Committee
Russell Senate Office Building
Washington, D.C. 20510

NOMINATION OF JOHN P. VUKASIN TO THE UNITED STATES FEDERAL DISTRICT COURT

Dear Senator Thurmond:

The purpose of this letter is to support and request that serious consideration be given to the Nomination of John P. Vukasin to the United States Federal District Court. I have known Judge Vukasin for many years and it appears to me that he would add great dignity to a long line of outstanding jurists who have served with great distinction on the Federal Bench.

It has been brought to my attention that a claim has been made that Judge Vukasin has made or expressed some negative attitudes relating to civil rights matters while serving as a Judge in Alameda County Superior Court. I am a black attorney, and in my dealings with Judge Vukasin, in all instances he has demonstrated great patience and respect to all views expressed by opposing counsel and me. I disagree with the suggestion that Judge Vukasin has a questionable record on civil rights matters because as a Superior Court Judge he would not be involved with such matters. The claim, therefore, would be groundless. In point of fact, most of the important civil rights matters are handled in other agencies, not the Superior Court.

It is my personal recommendation that Judge Vukasin be confirmed and granted the privilege of serving as a Federal Judge, which is the dream and hope of most attorneys.

If you desire further comments from me, please contact me by mail.

Very truly yours,

Harold Perry

HAROLD L. PERRY

BROOME, COOPER & ASSOCIATES

THOMAS J. BROOME
JOHN M. COOPER
ATTORNEYS AT LAW

145 E. 14th STREET
OAKLAND, CALIFORNIA 94606
(415) 465-8744

3526 MACDONALD AVENUE
RICHMOND, CALIFORNIA 94805
(415) 233-5100

Please reply to Oakland Office

March 10, 1983

Chairperson
Senate Judiciary
Committee
Russell Senate Office Bldg
Washington, D.C. 20510

Gentlepersons:

This letter is being written with regard to the pending confirmation of the Hon. John P. Vukasin for the Federal Bench.

I am a Black attorney who have practised in the County of Alameda where Judge Vukasin is seated. Not only have I practised continually in this county but I was the Court Officer in Juvenile Court where Judge Vukasin began his judicial assignment.

During the course of his tenure, I have made many appearances before Judge Vukasin and we certainly have had many disagreements over issues in various cases.

It has come to my attention that it has been suggested that Judge Vukasin is a racist. This is absolutely absurd. I observed nothing during the lengthy period of time that I sat in his courtroom and he administered justice and the law to predominantly Black kids to even vaguely suggest that judge Vukasin is a racist.

I would ask that the person who made such suggestions be closely scrutinized as to his or her possible motives as it is personally offensive to me when people use Blacks and their plight as a basis for their objections to other people and on issues unless there is some basis in fact.

I hope that this will at least advise this committee that some of those who have worked very closely with Judge Vukasin, and still do not share the same views that he does, feel willing to speak out on this issue as it is extremely offensive and, in my opinion, an unwarranted attack upon this man's integrity.

I would hope that Judge Vukasin would be given that consideration the committee feels his candidacy is warranted notwithstanding the apparant allegations of racism unless they can be clearly substantiated. I have no doubt that the latter will not occur.

Very Truly Yours,

Thomas J. Broome
Attorney at Law

Alameda County
District Attorney's Office
John J. Meehan, District Attorney

MAR 2 [illegible] 1983

March 21, 1983

The Honorable Strom Thurmond
Chairman, Senate Judiciary Committee
Russell Office Building
Washington, D. C. 20510

Dear Senator Thurmond:

I write to support the candidacy of Judge John Vukasin, Jr. for appointment as a United States District Court Judge for the Northern District of California. It has come to my attention that others have accused Judge Vukasin of being impolite to women attorneys who have appeared before him. Such an accusation could not be further from the truth.

As you know, Judge Vukasin sits as a Superior Court Judge in Alameda County, California. As a Deputy District Attorney in that county for over seven years, I have appeared before Judge Vukasin many times. I and many others have found him to be consistently courteous and fair to all who appear before him. His even handed approach to the resolution or adjudication of cases makes his a very pleasant court in which to practice. His decisions are based , not on the race or gender of the parties or their advocates, but on the dictates of fact and law.

I commend him to you most highly and would be happy to discuss this matter further with your staff if I may be of any further assistance.

Very truly yours,

Carol A. Corrigan, J. D.

CAC/fb

Courthouse, 1225 Fallon Street, 9th Floor, Oakland, CA 94612 (415) 874-6565

The CHAIRMAN. Judge, there have been allegations that several defense attorneys in California use their right of preemptory challenge to avoid having you hear their cases. Beyond this, it his been suggested that you were removed from the criminal trial department of the California Superior Court because of repeated objections from these trial attorneys due to the fact that you were not qualified or did not possess the proper judicial temperament or demeanor to hear such cases.

Judge, are you aware of any instance where defense attorneys requested not to have you hear their cases and were you in fact transferred to the civil trial division in the California Superior Court?

Mr. VUKASIN. May I address myself to your first question about being challenged not to hear cases? California law provides that every litigant, either in civil or criminal case, have one what we refer to as "preemptory challenge of a judge" during the course of his litigation. Those preemptory challenges are usually used for one of two purposes. One is to obtain a delay in your trial, regardless of who the judge is; and the other is to avoid appearing before a particular judge for some reason.

Our system is such that when a trial department finishes one trial, it is opened up for the next trial, and the next trial in line is assigned to that judge, whoever he may be. If one of the parties to litigation does not want to go to trial and cannot obtain a continuance otherwise, they usually can obtain a continuance by filing a challenge against the judge, whoever he may be, because it is very unusual that two trial departments are open on the same day. I do not know if I have been challenged for that reason. It may very well have happened, but those are not challenges against any particular judge.

The other reason for exercising preemptory challenges is if an attorney wants to avoid being before that judge. And I heard, after I had been in the criminal court for about 2 years or maybe a little bit longer, that I had been challenged two or three times in a period of a few months. I was deeply concerned when I heard that, and I went to the supervising criminal judge, which is where these challenges are posed, and asked him if this were true and if so, what was prompting people to challenge me, because I was not aware of anything that I had done that would justify such challenge. He told me not to worry about it, that it was nothing to worry about, that there was no objection to the manner in which I conducted the trial; but, if attorneys had a criminal case, if a criminal defense lawyer had a criminal case in which he felt his client had a high probability of being convicted, then some of the attorneys challenged me because I had a reputation for being a stern and stiff sentencer. He conversely said that attorneys had told him that if they had a good case, they had a fair opportunity in their mind of obtaining an acquittal, they had no objection to be assigned to my department, because they were satisfied they would get a fair trial. It was only when they were sure, or relatively sure, that there would be a verdict of guilty, and the judge would be imposing sentence—particularly true, he told me in the case of recidivists—that I had a reputation for being impatient with repeat offenders.

Excuse me, sir. Was there another part to that question? Did I answer the whole thing?

The CHAIRMAN. Your transfer to the civil trial division.

Mr. VUKASIN. Oh. I was never transferred by anyone else from the criminal department to any other department. Our system is such that late every year, the judges secure or obtain their assignment for the following year on the basis of seniority. Criminal departments are less desirable, generally, than civil departments, and I was not able to select a civil department until I reached sufficient seniority. And when I did have sufficient seniority, I opted to transfer from criminal to civil. I jumped at the opportunity to do so, because I much prefer civil trials. But I was never moved out of criminal for cause.

The CHAIRMAN. Judge, it has been said that you spend excessive period of time away from the bench, often to engage in political activity. How do you respond to this allegation?

Mr. VUKASIN. May I take the last portion of that question first—or, accusation. Since I was sworn in as a judge on October 22, 1974, I have not participated in any political activities of any kind except my reelection campaign in 1976. I participated in my campaign, but no other political activities, and I have never taken a minute off of the bench to participate in political activities other than when it was necessary for my reelection efforts.

I find it difficult to understand how anyone can make an accusation of excessive absences from the bench, when I have not taken a full allocation of vacation time in any year since I have been a judge, with the exception of one year. I took my family to Europe in 1977, and that year, I may have taken more than the allocation for a year of vacation. But I saved up accrued vacation time from the prior year. and did not exceed the amount that was available to me then.

I think I have 26 or 28 days—before this week, I think I had 28 days—of accrued vacation time which I have not used. If I recall correctly, right now, I have taken only 2 days of vacation this year, and this is June 22, and those 2 days were to attend a management meeting of the leadership of the public utility law section of the ABA. In connection with that, I have been active in the leadership of the public utility section of the American Bar Association. I was committee chairman of a number of committees. I served on the board of the governing council for 3 years. Two years ago, I was chairman-elect, and last year, I was chairman of that organization, that body. That called for meetings outside of the State of California and away from the bench on numerous times during the year. Each time I attended one of these meetings, I had it charged against my vacation allotment. I did not take what we referred to as "conference time." So, even with that, I did not take fully allocation of vacation, even though I charged these law-related meetings to personal vacation, not bench conference time.

The CHAIRMAN. This last allegation is somewhat serious, so I took it upon myself to contact the Superior Court of Alameda County, and I received a letter from Mr. Stanley R. Collis, executive officer of the court:

Without objection, I will place this letter in the record.

[The following was received for the record:]

SUPERIOR COURT
STATE OF CALIFORNIA
COUNTY OF ALAMEDA
COURT HOUSE - OAKLAND, CA 94612
(415) 874-6184

— fic&p. April 6, 1983. — fic&p.

Honorable Strom Thurmond, Chairman
Senate Judiciary Committee
Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Thurmond:

It has come to my attention that you have received highly inaccurate information regarding extensive absences and vacations taken by Judge Vukasin. Judge Vukasin has never taken his full allocation of vacation during the seven years I have been with Alameda Superior Court nor has he asked for or taken any other type of leave for political purposes.

Judge Vukasin has been an officer of various American Bar Association groups which have required his attendance at meetings and conferences in many locations throughout the country. He has never requested conference leave for those activities and all of his time away from Court has been charged to his vacation allotment. In addition, Judge Vukasin has not taken one day of sick leave during the eight and a half years he has been a member of the Court.

As stated in previous correspondence, Judge Vukasin is a popular and respected judge. I suppose it is not unusual to receive vindictive comments from some members of the Bar when contending for public office, but I can assure you if a poll were taken among the more professional lawyers in Alameda County, Judge Vukasin would rate highly.

If I can be of further assistance to you in your consideration of confirmation of his nomination, please don't hesitate to call me.

Very truly yours,

Stanley R. Collis
Executive Officer

SRC:gh

cc: Honorable J. P. Vukasin, Jr.

The **Chairman.** Judge, it has also been alleged that you recently were rated by the local bar near the bottom of the more than 30 Superior Court judges sitting in Alameda County. How do you respond to that?

Mr. **Vukasin.** Senator, the poll was taken by the Alameda County Bar Association about 4 or 5 years ago, if I recall correctly. The association has several thousand members. I would estimate that about 600, 650, maybe 700 different attorneys appear in my court every year. Five hundred members of the association participated in that poll, and of those who participated and evaluated me, only 37 said that they thought that there were areas where I could improve in my service as a judge. I would submit that 37 out of those large numbers is not a significant indictment.

The **Chairman.** Judge, it is my understanding that the poll taken by the Alameda County Bar Association was conducted in 1979, and the figures you have quoted are correct, but in the year 1981, you were selected as Judge of the Year by the Alameda Contra Costa Trial Lawyers' Association. This selection was based on extraordinary ability and only one judge per year of the more than 60 trial judges in the county are so honored.

Is that information correct?

Mr. **Vukasin.** Mr. Chairman, that is correct, and I felt very grateful to have received that honor from this organization, of which several hundred attorneys' entire practice is engaging in trial work. That is their professional specialty. I felt very honored to be selected as Trial Judge of the Year.

The **Chairman.** Now, we have another witness here to testify, so would you just have a seat, please?

Mr. **Vukasin.** Thank you very much, Mr. Chairman.

The **Chairman.** As a result of Senator Cranston's expressed concerns, I asked the Department of Justice to fully investigate the allegations raised against Judge Vukasin. I understand that Mr. Dennis Mullins is here from the Justice Department and will give us the official results of their investigation.

Now, Mr. Mullins, would you please come forward?

Please raise your right hand. Do you solemnly swear that the testimony you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. **Mullins.** I do.

STATEMENT OF DENNIS F. MULLINS, SPECIAL ASSISTANT TO THE ASSISTANT ATTORNEY GENERAL FOR LEGAL POLICY, U.S. DEPARTMENT OF JUSTICE

The **Chairman.** Mr. Mullins, would you state your full name and title and briefly tell the committee what action you took in pursuing the allegations raised in Senator Cranston's letter?

Mr. **Mullins.** Mr. Chairman, my name is Dennis Mullins, and I am Special Assistant to the Assistant Attorney General for Legal Policy, Jonathan C. Rose. My primary responsibility is to assist the Assistant Attorney General and the Attorney General in their evaluation of candidates for the Federal judiciary. I have personally spent many hours investigating the background and qualifications of California Superior Court Judge John Vukasin, who has been nominated for the U.S. District Court for the Northern District of California.

Judge Vukasin's background and qualifications have been thoroughly investigated. The FBI investigation, far from being perfunctory, was quite extensive. The FBI interviewed a total of 83 people, including 27 practicing attorneys and 7 of Judge Vukasin's colleagues on the Alameda County Superior Court.

The American Bar Association's Standing Committee on Federal Judiciary conducted its usual extensive investigation, interviewing between 30 and 40 practicing attorneys and judges in the area. In this case, the actual investigation was conducted by the highly respected San Francisco attorney and former ABA president, John Sutro.

I personally interviewed 43 people, including 6 of Judge Vukasin's present or former colleagues on the bench, 19 attorneys who have practiced before Judge Vukasin, and 7 individuals who had firsthand knowledge of Judge Vukasin's tenure on the California Public Utilities Commission. In addition, I personally reviewed the file from the confirmation hearing that was held when Judge Vukasin was nominated for State judicial office.

With all of this information, I can say with confidence that we have a complete and accurate picture of Judge Vukasin's background and his qualifications for the Federal judiciary.

Mr. Chairman, I would be glad to answer any questions.

The CHAIRMAN. Well, Mr. Mullins, do Department of Justice records reflect that Judge Vukasin was nominated for a district judgeship by President Nixon in 1972 and that consummation was withheld after preliminary investigation by the Judiciary Committee?

Mr. MULLINS. No, Mr. Chairman, they do not. The Department of Justice has a record of every judicial nomination since 1789, and we have no record showing that Judge Vukasin was nominated for any judicial office prior to December 1982.

Some people recalled a rumor current in the early 1970's that Judge Vukasin would replace District Judge Samuel Conte if the latter were elevated to the ninth circuit. However, Judge Conte was not elevated, and there were no district court vacancies for which Judge Vukasin would have been eligible between the years of 1970 and 1975.

The CHAIRMAN. Mr. Mullins, was Judge Vukasin nominated for any judicial appointment during this general period of time?

Mr. MULLINS. Yes, he was nominated to the California Court of Appeals, the intermediate appellate court in California, by then Gov. Ronald Reagan in March 1974. Hearings were held before the California Commission on Judicial Appointments, a three-person panel with the power to confirm the Governor's judicial selections. In May 1974, the nomination was withdrawn at Judge Vukasin's request without action having been taken.

The CHAIRMAN. Now, did your investigation disclose why the nomination was withdrawn?

Mr. MULLINS. Yes, Mr. Chairman, it did. It was withdrawn in the face of opposition that had been expressed at the commission's hearing. The opposition was of two types. First, the State bar board of Governors voted to oppose the nomination of Judge Vukasin because it concluded that he had insufficient trial experience. He had not previously served as a trial judge, and they felt that he had insufficient experience as a trial lawyer while in private practice.

The remaining opposition could be described as political. It was by persons who disagreed with Judge Vukasin's policies and decisions during his tenure as a member and chairman of the California Public Utilities Commission—or PUC, as it is known—the body that sets rates for and regulates private utility companies and the intrastate transportation industry.

While this political opposition grabbed the headlines, I understand that the commission considered only the State bar's evaluation of Judge Vukasin's trial experience as being relevant to its inquiry.

The CHAIRMAN. Now, did the Department of Justice find the State bar's evaluation in 1974 to be relevant to the nomination we are considering today?

Mr. MULLINS. No, Mr. Chairman, it is not. The ABA's Standing Committee on Federal Judiciary also considered this issue and determined that even if Judge Vukasin had insufficient trial experience in 1974, any deficiencies in this regard have been eliminated by 9 years of experience on the State trial court of general jurisdiction. In agreement is Mr. Seth Hufstedler, who, as president of the California State Bar in 1974, testified in opposition to Judge Vukasin. Mr. Hufstedler agrees that Judge Vukasin would now have to be reevaluated in light of his service on the bench. I should note that when the ABA committee conducted its evaluation late last year, it found Judge Vukasin to be qualified.

The CHAIRMAN. Mr. Mullins, it has been alleged that when Judge Vukasin served with the California Public Utilities Commission, he rendered 100 percent of his decisions in favor of utility or corporate interests. Based on your evaluation of Judge Vukasin's records, would you say this statement is accurate?

Mr. MULLINS. No, that would not be true. First of all, such a statement would assume that the interests of energy producers and consumers are inherently in conflict with each other. However, the first energy crisis, which occurred during Judge Vukasin's tenure on the PUC, demonstrated the shortsightedness of such an attitude. Now, it may have seemed to many people that the PUC was pro-utility because it was granting rate increases at an unprecedented pace. However, Judge Vukasin's tenure on the PUC coincided with two events that mandated that such increases be granted in order to preserve a healthy utility industry. These were the beginning of our Nation's first great inflationary period, which lasted from about 1968 to 1981, and the first energy crisis.

In a letter dated April 11, 1974, from PUC general counsel, John Mathis, to the California Commission on Judicial Appointments, Mr. Mathis said that—and I quote—"In approximately 80 separate matters coming before the commission for decision over the past 5 years in which he has served as commissioner, he has either dissented from or refused to vote in favor of rate increases totaling more than $660 million in annual utility and transportation revenues."

A major decision cited by Mr. Mathis to demonstrate Judge Vukasin's fair approach was his dissent on antitrust grounds from PUC approval of a proposed merger between the State's two largest intrastate airlines. In short, it does not appear that Judge Vukasin was a rubberstamp for anybody or any particular interest.

The CHAIRMAN. Mr. Mullins, did the Department of Justice determine Judge Vukasin's record on the California Public Utilities Commission to be relevant to its evaluation of his qualifications to serve as a U.S. district court judge?

Mr. MULLINS. No, we did not consider Judge Vukasin's record on the PUC to be a material factor one way or the other. Based on his fine record of service as a State trial judge, Judge Vukasin would be qualified for the Federal bench in the absence of his PUC service, and he did nothing while on the PUC that would affirmatively disqualify him in light of his 9 years of service as a State trial judge. To place Judge Vukasin's service on the PUC in context, one must recognize the dual nature of that body. It has both quasi-judicial and policymaking functions. Some actions, such as contempt proceedings against utilities, are clearly judicial in nature. Others, such as requiring utilities to provide below-cost service to poor people subsidized by commercial customers, are clearly policymaking and legislative in nature.

Ratesetting seems to be quasi-judicial in theory, but it has strong policy overtones. Most of the judicial functions associated with the ratesetting process, such as swearing witnesses, taking evidence, and making findings, are performed by hearing examiners, who are similar to the Federal administrative law judges. These people develop a record which, along with staff recommendations, is presented to the PUC members. The latter then determine what rates would be—and I quote the legal standard—"just and reasonable," a necessarily broad standard.

The dual, quasi-judicial and quasi-legislative nature of the PUC is reflected in its statutory procedures. Its decisions are appealed directly to the State supreme court, but its proceedings are subject to the State sunshine law, and its decisions must be made in public, the same as any city council in California. It is telling that when the State bar concluded in 1974 that Judge Vukasin then had no judicial experience and insufficient trial experience, it specifically determined that the role of a PUC member is so different from that of a judge that Judge Vukasin's service on the PUC was not relevant to the bar's evaluation.

It is common knowledge that then Governor Reagan appointed individuals to the PUC who shared his views on the importance of economic growth and energy development. Similarly, his successor appointed people who shared his views on nuclear energy and cost sharing. The PUC is very much a policymaking body, and in the early 1970's, it found itself in the middle of several heated political debates on energy, environmental and consumerist issues. Judge Vukasin's service on the PUC must be viewed in that context.

The CHAIRMAN. Mr. Mullins, has the Department of Justice received any information that would suggest that Judge Vukasin is biased against women, blacks, or other minority groups?

Mr. MULLINS. No, we have not. Mayor Lionel Wilson of Oakland, who is black, supervised Judge Vukasin when they were in the criminal department together and now is certainly in a position to keep informed of community events. He said that he has never heard of any reports of bias about Judge Vukasin.

Judge Donald McCullum, who is currently the presiding judge of the Alameda County Superior Court, was president of the local NAACP for the 15 years preceding his appointment to the bench. He, too, says he has never heard of any instances of bias on the part of Judge Vukasin.

The CHAIRMAN. We are going to take a 5-minute recess, so just be at ease for a few minutes.

[Short recess.]

The CHAIRMAN. Mr. Mullins, does your investigation disclose any information that would suggest that Judge Vukasin demonstrated a bias against criminal defendants?

Mr. MULLINS. Several private criminal defense lawyers were complimentary about the way Judge Vukasin handles their cases. The only criticism was from the public defender's office, and even there, much was hearsay and seemed to have political overtones.

Judge Vukasin has clearly stated his criminal justice philosophy. He feels that trials should be conducted fairly, but that repeat offenders should be given firm sentences. Several private criminal defense attorneys said that while they had no qualms about their client receiving a fair trial in front of Judge Vukasin, they were concerned about him receiving a stiff sentence if he were found guilty. Judge Vukasin's publicly expressed concern for victims of crime and his policy of putting repeat offenders behind bars is consistent with this administration's belief that the rights of victims should be put back in balance with the rights of criminal defendants.

The CHAIRMAN. Mr. Mullins, were there any indications that criminal defense lawyers regularly use their right of preemptory challenge to avoid having Judge Vukasin hear their cases?

Mr. VUKASIN. In California, each attorney has the right to challenge one judge without cause. Preemptory challenges are directed to the presiding judge, so the challenged judge will not know that he has been challenged or by whom. Three judges who presided over the criminal department during Judge Vukasin's tenure there, including the current mayor of Oakland, Lionel Wilson, said that Judge Vukasin was not the target of excessive challenges. The court administrator, Stan Collis, confirmed this. I was told that the preemptory challenge usually is exercised by attorneys who are not ready for trial and they exercise the challenge in order to obtain a delay. This usually works because it is rare that there is another judge who will be available to handle that case the same day. One former presiding judge said that the limited number of challenges made by criminal defense attorneys for the purpose of avoiding Judge Vukasin were made when the defendant was clearly guilty, rather than when the guilt or innocence was a real issue. This would reflect Judge Vukasin's firm sentencing policy, rather than any unfairness toward criminal defendants at trial.

The CHAIRMAN. Mr. Mullins, let me ask you a question. You said a defendant can exercise one preemptory challenge. Do they make up a roster of cases where this defendant will know who the judge is going to be, or are they given the right to challenge one judge, say, out of 40 judges? In other words, are all the judges considered? I forgot to ask Judge Vukasin that.

Mr. MULLINS. It works this way. In the superior court, you will get different judges at different stages of the proceedings. You may get one judge for the law and motion proceedings, one to hear your preliminary injunction motion, another one to hear preliminary matters, and another one to conduct the actual trial. People show up for court when they have a court date. The attorneys, the parties and the witnesses show up for trial. They do not know who they are going to get for a judge. They are then assigned to a division. At that point, they know who they are going to get, and at that point, they can exercise the challenge.

The CHAIRMAN. In other words, the whole list of judges is not given that you can oppose one. The judge is assigned to the case, and then if a defendant objects, he can do so to one judge; is that it?

Mr. MULLINS. That is right. Defendant or prosecutor, or plaintiff or defendant in a civil case.

The CHAIRMAN. Mr. Mullins, was Judge Vukasin removed from the criminal trial department because of the objections of defense attorneys?

Mr. MULLINS. No. My information is that that is not true. Like most judges in Alameda County, Judge Vukasin started in the criminal trial department because that is the least desired assignment to which the less senior judges are assigned. Like most of his colleagues, Judge Vukasin was prepared to move out of the criminal department as soon as he acquired the sufficient seniority to make that election. He moved to the civil department when he was still one slot short of having the necessary seniority. According to the court administrator, Stan Collis, when Judge William Hayes died in February 1979, Mr. Collis asked Judge Vukasin to take Judge Hayes' place as the civil settlement judge. Judge Vukasin declined, because he knew that when the judges met the next November to select their assignments, he would be bounced back to the criminal department, and he did not want to change assignments for such a short period of time. He agreed to move to the civil department only when a more senior judge promised to elect the criminal department the next year, which would permit Judge Vukasin to stay in the civil department.

The CHAIRMAN. Mr. Mullins, has your investigation disclosed that Judge Vukasin has a history of excessive absences from the bench?

Mr. MULLINS. No, Mr. Chairman. As you stated earlier, Mr. Collis, the court administrator, said that during his 7 years with the court, Judge Vukasin has never exceeded the number of vacation days set by the court as a guideline, which is 25 days per year. Judge Vukasin is often out of town on bar association activities. As he mentioned, he was president of the American Bar Association's section on public utility law, but he has always used his vacation time for this purpose.

The CHAIRMAN. Mr. Mullins, did the Department of Justice investigation indicate that Judge Vukasin engaged in political activities after becoming a superior court judge?

Mr. **Mullins**. There has been no indication as such, with the exception, of course, of his own contested election in 1976. If he had engaged in political activities, we probably would have heard about it, because such behavior would have been contrary to the standard of behavior expected of and practiced by judges throughout the State of California.

The **Chairman**. Mr. Mullins, does the Department of Justice have any information to suggest that Judge Vukasin's trials take longer to complete due to inattentiveness or long breaks?

Mr. **Mullins**. A number of attorneys reported that Judge Vukasin is as hardworking and diligent as is expected. There is no evidence of a pattern of short days, long breaks, or anything else that would indicate a lack of diligence. Several attorneys said his trials take somewhat longer than average, but nothing excessive. Most attributed this to his willingness to let attorneys try their cases, rather than pushing them. Many complimented him for taking the time to look up or request argument on an unfamiliar point, rather than pretending that he knows the answer. Also, his trial days are sometimes shortened by an hour or so, because he will conduct settlement conferences on unrelated cases for other judges in the mornings and the afternoons, before and after conducting his own trials.

Mr. Collis said that Judge Vukasin handles more cases than the average judge because his efficient and successful record as a settlement judge more than compensates for his longer than average trials.

The **Chairman**. Mr. Mullins, now, would you briefly summarize the findings of your investigation?

Mr. **Mullins**. Thank you, Mr. Chairman.

To briefly summarize our findings, we have no doubt that John Vukasin is qualified to serve as a Federal district judge. He is an excellent settlement judge, the best in Alameda County. Many attorneys said they specifically request that he hear their complex civil cases. He is a good judge in trial. There is no question of any bias against women or any minority group. He conducts a fair criminal trial and has a reputation for issuing firm sentences to repeat offenders. He works diligently and handles an above-average caseload.

In short, he has had 9 years of on-the-job training as a trial judge. The large majority of his fellow judges and the attorneys who have practiced before him in the last several years have indicated that he has done his job well.

Some negative comments about Judge Vukasin were received, as you know, so we carefully investigated all such allegations. By far, most of them related to Judge Vukasin's term on the public utilities commission and were largely made by those who disagreed with his style and his policies as a commission member.

Some negative comments relative to his judicial performance were made, but almost all dated to his first couple of years on the Bench, during which time he was assigned to hear criminal cases only, even though he had no background in criminal law.

In contrast, the vast majority of attorneys who have appeared before him recently were highly complimentary. As Senator Wilson mentioned earlier, Mr. Chairman, he was recently selected as

Judge of the Year by the Alameda/Contra Costa County Trial Lawyers' Association in recognition of his outstanding performance as a settlement judge.

The CHAIRMAN. Mr. Mullins, we appreciate your assistance and the thorough investigation you made, and as I understand, you made this investigation seeking the truth—not to try to vindicate Judge Vukasin, but to go after the facts and the truth—is that correct?

Mr. MULLINS. That is correct, Mr. Chairman. What I have said today is a fair and accurate report of what I found when I interviewed 43 individuals in California and reviewed the record of the State proceedings.

The CHAIRMAN. I would like the record to show that the committee received approximately 100 letters in support of Judge Vukasin's nomination and, interestingly enough, not one letter in opposition to the nomination. There is no doubt in my mind, however, that the distinguished Senator from California was personally most sincere in opposing Judge Vukasin and that he based his opposition on the information made available to him.

I have known Senator Cranston for many years and have always found him to be a man of compassion, integrity and fairness. I have no doubt that he acted with great reluctance in opposing this nomination, and I hope that today's hearing will resolve some of his concerns.

Now, Judge Vukasin, as I stated at the beginning of this hearing, I previously examined the allegations raised against you. The testimony given in today's hearing only adds support to my previous findings that the allegations were lacking in merit.

Judge Vukasin, I appreciate the time you have given this committee, and I know that if you are confirmed by the Senate, you will make an outstanding district court judge. I would like to assure you of my support for your nomination, and I do this after thorough investigation by the committee and by the Justice Department and from the information we have received.

Do you have anything else to say, Judge?

Mr. VUKASIN. Mr. Chairman, I am deeply grateful for your ability to support my confirmation. I thank you very much for that.

I am particularly grateful for having had this opportunity to address the charges that have been made against me. This is the first opportunity that I have had to address myself to the allegations that were made against me, and I deeply appreciate having this opportunity.

I want to thank you, and Duke Short of your staff, the chief investigator, I understand, and other members of your staff who may have worked on this operation, for the large amount of time that they spent to satisfy themselves and yourself as to whether or not I am qualified for this position. I deeply appreciate it.

The CHAIRMAN. Well, the charges were rather serious, and we wanted to be sure that the matter was clear and that there was no merit in the charges, and the investigation by the committee—and we have excellent investigators here—and also by the Justice Department indicates that the charges were without merit.

If the Senate confirms you, I hope you have a successful and happy tenure of service on the bench.

Mr. **Vukasin**. Thank you, Senator.

The **Chairman**. Now, without objection, I am going to place in the record a short biography of each appointee.

We will leave the record open until the end of the week, in the event there is anything else desired to be placed in the record, pro or con, by either the appointee or any opposition.

I believe that completes the hearing today. Thank you very much.

[Whereupon, at 4:10 p.m., the hearing was adjourned.]

BIOGRAPHIES

Pasco M. Bowman II

NOMINEE, U.S. CIRCUIT JUDGE, EIGHTH CIRCUIT COURT OF APPEALS

Birth: December 20, 1933, Harrisonburg, Va.

Legal residence: Missouri.

Marital status: Married to Ruth Elaine Bowman, three children.

Education: 1951-55—Bridgewater College, B.A. degree; 1955-58—New York University School of Law, LL.B. degree.

Bar: 1958—New York, 1965—Georgia, 1980—Missouri.

Military service: 1959 to present—U.S. Army Reserve.

Experience: 1958-61—Cravath, Swaine & Moore, associate; 1961-62—Fulbright Scholar, London School of Economics and Political Science; 1964-70—University of Georgia School of Law, professor; 1970-78—Wake Forest University School of Law, dean and professor of law; 1978-79—University of Virginia School of Law, visiting professor of law; 1979 to present—University of Missouri at Kansas City School of Law, dean and professor of law.

Stephen N. Limbaugh

NOMINEE, U.S. DISTRICT JUDGE, EASTERN AND WESTERN DISTRICT OF MISSOURI

Birth: November 17, 1927, Cape Girardeau, Mo.

Legal residence: Missouri.

Marital status: Married to DeVaughn Anne Mesplay, 3 children.

Education: 1946-48—Southeast Missouri State University, 1950—B.A. degree; 1948-51—University of Missouri (at Columbia) Law School, J.D. degree.

Bar: 1951—Missouri.

Military service: 1945-46—U.S. Navy.

Experience: 1951 present—partner, Limbaugh, Limbaugh, Russell & Syler 1953-57—Prosecuting attorney, Cape Girardeau County; 1964-68—City attorney, Cape Girardeau, Mo.

Peter C. Dorsey

NOMINEE, U.S. DISTRICT JUDGE, DISTRICT OF CONNECTICUT

Birth: March 24, 1931, New London, Conn.

Legal residence: Connecticut.

Marital status: Married to Cornelia McEwen Dorsey, 4 children.

Education: 1949-53—Yale University, B.A. degree; 1956-59—Harvard Law School, LL.B. degree.

Bar: 1959—Connecticut.

Military service: 1953-56—U.S. Navy.

Experience: 1959-63—Associate, Gumbart, Corbin, Tyler & Cooper; 1963-74—Associate and partner. John C. Flanagan, Esq.; 1974-77—U.S. attorney, District of Connecticut; 1977-80—Partner, Flanagan, Dorsey & Flanagan; 1980 to present—Partner, Flanaga, Dorsey, Mulvey & Oliver.

John P. Vukasin, Jr.

NOMINEE, U.S. DISTRICT JUDGE, NORTHERN DISTRICT OF CALIFORNIA

Birth: May 25, 1928, Oakland, Calif.

Legal residence: California.

Marital status: Married to Carol Sue Davis Vukasin, 5 children.

Education: 1946-50—University of California, A.B. degree; 1953-56—University of California School of Law (Boalt Hall), J.D. degree.

Bar: 1956—California.

Military service: 1951-53—U.S. Army.

Experience: 1956-57—Trial attorney, Division of Highways, Department of Public Works, State of California; 1958—Private practice, San Francisco, Calif.; 1959-68—Private practice, Oakland, Calif.; 1969-74—Commissioner, California Public Utilities Commission; 1974-82—Superior Court Judge, County of Alameda, State of California.

CONFIRMATION HEARING ON STEPHEN S. TROTT

WEDNESDAY, JUNE 29, 1983

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 2:03 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the committee) presiding.

Staff present: Vinton D. Lide, chief counsel; Duke Short, chief investigator; and Allan Spence, investigator.

OPENING STATEMENT OF CHAIRMAN STROM THURMOND

The CHAIRMAN. Mr. Trott, will you stand and be sworn?

Do you solemnly swear that the testimony you will give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. TROTT. I do.

The CHAIRMAN. Do you have any of your family here or friends?

Mr. TROTT. Yes, Senator. My sister, Sara Trott, is here, to my left.

The CHAIRMAN. We are glad to have you.

Ms. TROTT. Thank you, Senator.

The CHAIRMAN. Without objection, the résumé of Mr. Trott will be placed in the record.

I understand that Senator Wilson may not get here in time; he wants to place a statement in the record endorsing you if he is too late.

Senator Cranston has also approved you. I do not know whether he wants to put a statement in the record or not, but if he does, the record will be open for him to do that.

Mr. TROTT. Thank you.

TESTIMONY OF STEPHEN S. TROTT, NOMINEE, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

The CHAIRMAN. Now, Mr. Trott, you have been nominated for the position of assistant attorney general in charge of the Criminal Division. You will be responsible for the development and enforcement of criminal statutes in a vigorous, fair, and effective manner. You will also be responsible for leadership in the enforcement of large or complex criminal cases in Federal priority areas. As assistant attorney general, what will be your priority for enforcement efforts as they relate to the Criminal Division?

Mr. TROTT. Senator, I have two main priorities that I would like to address in response to your question. The first is in the area of drug trafficking. As you know, the Department of Justice and the President himself have placed a lot of emphasis in that area in the last year, and I intend to continue to do everything I can to make sure that the Federal Government participates as strongly as it can in the nationwide effort to eradicate the problems of drug trafficking that this country is now suffering under.

Second, organized crime continues to be a major menace in the United States. It is tied in very closely to the priority that I first mentioned, drug trafficking, and that is something that I will also pay a lot of attention to.

Finally, in the area of working cooperatively with State and local officials through the law enforcement coordinating committees, I think that, together, Federal and local law enforcement can continue to work on these problems.

The CHAIRMAN. Now, Mr. Trott, you will be responsible for supporting all U.S. attorney offices, including participation in cases on appeal, for providing advice on all Federal criminal statutes, for supplying temporarily supplementary prosecutorial personnel, and for the preparation of civil litigation which arises from criminal enforcement. Strike forces often require similar assistance.

Now, Mr. Trott, you have been U.S. attorney for the Central District of California since February 1982, I believe.

Mr. TROTT. December 1981 was when I actually——

The CHAIRMAN. December of 1981?

Mr. TROTT. Late December.

The CHAIRMAN. You were confirmed in February 1982, I believe.

Mr. TROTT. Yes, sir.

The CHAIRMAN. With this background, do you think that strike forces should be independent from the office of the U.S. attorney in the areas where they operate, or should the strike forces be under the jurisdiction of the U.S. attorney in that area?

Mr. TROTT. Senator, I have had very good results with the strike force in my district. The strike force and the U.S. attorney's office work together closely on everything. Their personnel attend office meetings in my office and we share decisionmaking processes on the kinds of cases that they are working on in the central district of California.

I am not so sure that the strike force necessarily has to be directly under the control of the U.S. attorney, but it is absolutely imperative that a very close working relationship exists between the two for the strike force to have the impact in the area of organized crime that is so important.

So I would suggest that in some respects it is not bad to have an independent strike force because that insures that the strike force is operating outside of the parameters of the immediate, parochial interests of the U.S. attorney.

Historically, there has been some friction between strike forces and U.S. attorneys, but my observations during the last 2 years indicate that that is almost nonexistent now The operations are working closely together and, of course, that is what is important.

The CHAIRMAN. Mr. Trott, this committee is presently conducting hearings on the subject of organized crime in America. The hearings to date have indicated that organized crime is probably the single most serious threat to the domestic security of our Nation.

Illegal drugs and narcotics trafficking is one of the major criminal problems in the United States today involving organized crime. Do you have any suggestions or ways to diminish this threat?

Mr. TROTT. I think the most exciting prospect to come along in this area in a long time relates to the Presidential task forces that have been set up around the country. We have dedicated close to $130 million to putting in place special, experienced prosecutors to try to do something about the organized crime threat as it relates to narcotics.

One of the things that we are doing successfully in this effort is utilizing the financial investigation task force approach. For a long time, we spent a lot of time chasing just the dope and we failed to get at the kingpins at the tops of the ladders.

Now we are not only following the dope, but we are also following the money and we have discovered that by following the money and by using white-collar investigation techniques, we can find the people who are running these organizations.

The drug task forces are set up to do that and to bring to bear one of the best weapons that we have in this area involving asset forfeiture. It has been my experience that when you not only find out who is running the big narcotics rings and put them in jail, but take away the gains, the money, the houses, the boats, the airplanes that they have put together as a result of this, you start to have the impact that is so important.

The CHAIRMAN. That is somewhat the heart of the matter, is it not?

Mr. TROTT. Excuse me?

The CHAIRMAN. The money question is somewhat the heart of the matter?

Mr. TROTT. Yes; absolutely, that very much is the case. I have been a prosecutor since 1965. I moved into the Federal system just recently and I must tell you that I am extremely pleased with the tools available to Federal prosecutors to be able to make strong moves in the area especially of asset forfeiture.

The CHAIRMAN. The IRS could undoubtedly be of great assistance. Have you had the opportunity to work with them?

Mr. TROTT. Yes, I have. We have had remarkable success with the IRS. We have a financial investigations task force in California that has been extremely successful, and a major part of that task force has been IRS people. They have a remarkable ability to follow paper trails and to identify assets and to take things to their logical conclusion.

They, along with Customs and DEA and the FBI and local enforcement, have been extremely valuable.

The CHAIRMAN. Their cooperation would be very essential.

Mr. TROTT. Absolutely, there is no question about it.

The CHAIRMAN. Mr. Trott, it is my understanding that you favor revision of the exclusionary rule. What specific changes would you propose?

Mr. TROTT. Senator, I have been in favor of revising the exclusionary rule for approximately 15 years, and the major change that can be made that will still respect the basic constitutional rights of everyone in this country is to establish firmly a good-faith exception.

I think it is a shame to have cases now where police officers go to magistrates and judges and get search warrants, which are essentially court orders. Then, pursuant to the search warrants, they go out, conduct searches and seizures, and develop solid, concrete, reliable evidence pertinent to a criminal case, to find out later on that another judge, or sometimes even the same judge, changes his or her mind and invalidates the warrant.

The values of search and seizure of the fourth amendment simply are not promoted by that, and I am very hopeful that the U.S. Supreme Court will see its way clear to pursuing the good-faith exception in this country.

The Chairman. Well, they handed down a decision not long ago, though, and it did not go into that to the extent that you are interested, I imagine.

Mr. Trott. Yes; well, I think that all you have to have is basically a due process floor in this area.

The Chairman. I am hoping we will get through a Federal statute here that will take care of it.

Mr. Trott. That would be very helpful.

The Chairman. The ACLU and some members of the committee are opposed to changing that rule, but we are going to keep on until we get it changed.

Do you have any other legislative suggestions?

Mr. Trott. Involving the exclusionary rule?

The Chairman. The exclusionary rule.

Mr. Trott. Well, as I said before, the fourth amendment, as far as I am concerned, is one of the true cornerstones of our liberty in this country and the fourth amendment contains values that deserve to be protected.

The problem is that we have gotten out of balance over the years, though, and we have come up with remedies that have favored those people charged with crimes and put victims of crime at a disadvantage in court.

So I think not only do we have to have a good-faith exception, but as I said before, when you are not dealing with search warrants, adopt basically a due process approach to this and not penalize the citizens of the United States for the technical mistakes of police officers in the field, who are operating, again, in good faith.

The Chairman. On account of your practical experience as a U.S. district attorney in California, I imagine you would have other suggestions that you could make to the committee that would be helpful concerning criminal statutes. And if you have any thoughts along that line, if you would write me a letter we would appreciate it. We would be glad to hear from you.

Mr. Trott. I would be delighted to be helpful.

The Chairman. Any cooperation or assistance you can give us in these organized crime hearings would be very helpful, too.

Mr. Trott. Fine.

The Chairman. Now, I see your able and distinguished Senator from California is here, Senator Wilson. I just have one more question. I do not know whether he is in a hurry or not.

Would you care for me to go ahead or call you at this time?

Senator **Wilson**. Go right ahead, Mr. Chairman. I would be interested in your question.

The **Chairman**. Mr. Trott, you are reported to have made the statement that the cost of prosecuting one person for murder in California is now so great that it can bankrupt an entire county.

Would you comment on this statement and tell me what you would do to solve this problem?

Mr. **Trott**. Senator, in California the court procedures now required in major cases are so complex that some cases take up to a year and a half to resolve involving the selection of a jury.

I was referring to the Juan Corona case, which has cost the people of the State of California almost $5 million and is still stuck in another round of appeals. Sutter County, where that case was handled, was literally bankrupt by the cost and the State had to come in and add that amount of money to the coffers.

We have gotten ourselves in the State of California into a position where we simply cannot afford the kinds of luxuries that have been engrafted onto the criminal justice system. What I was talking about were some of the procedures that I have found in the Federal court system that expedite the handling of these cases without compromising the constitutional right to a fair trial of people charged with crime.

It has been my experience that the jury selection procedure in Federal court is far superior to that used in some of the State courts; that the Speedy Trial Act has been a definite value in making sure we move these things along. Also, the general approach of the Federal judiciary and the legislature has been extremely helpful.

The **Chairman**. Is there anything else you would care to say?

Mr. **Trott**. No. I am very appreciative of this opportunity. I have enjoyed working for the Justice Department for the last year and a half and I very much look forward to continuing in the new position.

The **Chairman**. We will now be glad to have your distinguished Senator come around and make a statement, I believe, in your behalf.

STATEMENT OF HON. PETE WILSON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator **Wilson**. Thank you very much, Mr. Chairman. I am delighted to be here today. Clearly, Mr. Trott needs no introduction. Judging from the questions and the answers, I think it is clear that he is not only an experienced prosecutor with both Federal and State experience, but that he shares the chairman's desire to see the kind of administration of justice that the people of this country deserve.

His record is a very proud one. I think the chairman has seen a capsule résumé and it indicates that notwithstanding his tender years, he brings to this position a very considerable amount of experience.

I should say that he brings, as well, an extraordinary reputation. He has been adjudged by his peers both in the defense bar and by fellow prosecutors as an extraordinarily able prosecutor.

He has served as the U.S. attorney for the southern district for a period since 1981—excuse me, for the central district. I keep forgetting that my hometown now constitutes the southern district. Unhappily, the administration of criminal justice has been a growth industry.

His experience, though, is heartening to me that we can reverse that trend. Steve Trott is not only well educated, but has brought a great deal of thought to the problems of the administration of criminal justice. He is the author of articles on the exclusionary rule.

He is the kind of person whom I think, frankly, is ideally suited for the responsibility of the assistant attorney general in charge of the Criminal Division, and I think this is one of the best appointments that I have been privileged to support. It is a nomination that will reflect great credit on the administration and, more importantly, very greatly enhance the ability of the criminal justice system to be effective without compromising the legitimate rights of the accused.

I might say that I sat here listening with great interest to the exchange between the Chair and Mr. Trott. He has pointed out a number of things which I think most rational observers would agree have been wrong with the California court system.

We have, in my view, erred on the side of affording not just the kind of protection that we would all like to see given to anyone who is innocent until adjudged guilty, but in California I think we have obstructed the administration of criminal justice.

There has been a popular revolt, in fact, much as occurred some years earlier with respect to overtaxation. There was, last year, a popular expression at the ballot of impatience with the kinds of things that have been permitting criminals to escape justice through technicalities.

One of the provisions central to that ballot proposition, which was entitled the victims' bill of rights, was an effort to require that the State procedures with respect to evidence be conformed to Federal standards.

I can only tell you, Mr. Chairman, that Steve Trott is a very distinguished prosecutor and I could not more emphatically urge that the committee vote for confirmation for his nomination.

The CHAIRMAN. Thank you very much, Senator.

Senator Wilson has been before this committee several times recently. He is very articulate, very intelligent, and makes a fine statement. You are fortunate to have such an outstanding advocate here to speak for you, Mr. Trott.

Mr. TROTT. Yes, I am, Senator. I am very grateful for his support and kind words.

The CHAIRMAN. Now, if you have nothing else to say, I think that completes this hearing. I want to take this opportunity to wish you great success during your tenure of office in charge of the Criminal Division of the Justice Department.

Mr. TROTT. Thank you.

The CHAIRMAN. The committee now stands adjourned.

[Whereupon, at 2:20 p.m., the committee was adjourned.]

BIOGRAPHY

STEPHEN S. TROTT

NOMINEE, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Born: December 12, 1938, Glenridge, N.J.

Legal residence: California.

Martial status: Married to Sally Snow Trott, 2 children.

Education: 1962—Wesleyan University, Middletown, Conn., B.A. degree; 1965—Harvard Law School, LL.B. degree.

Bar: 1966—California.

Experience: 1965 to present—Office of the District Attorney, for Los Angeles County: 1965-71—Trial deputy district attorney; 1971-72—Legislative advocate; 1973-75—Head deputy of Organized Crime and Narcotics Division; 1975-79—Chief deputy district attorney; 1979-82—Head deputy district attorney; 1982 to present—U.S. attorney, Central District of California, Los Angeles, Calif.

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